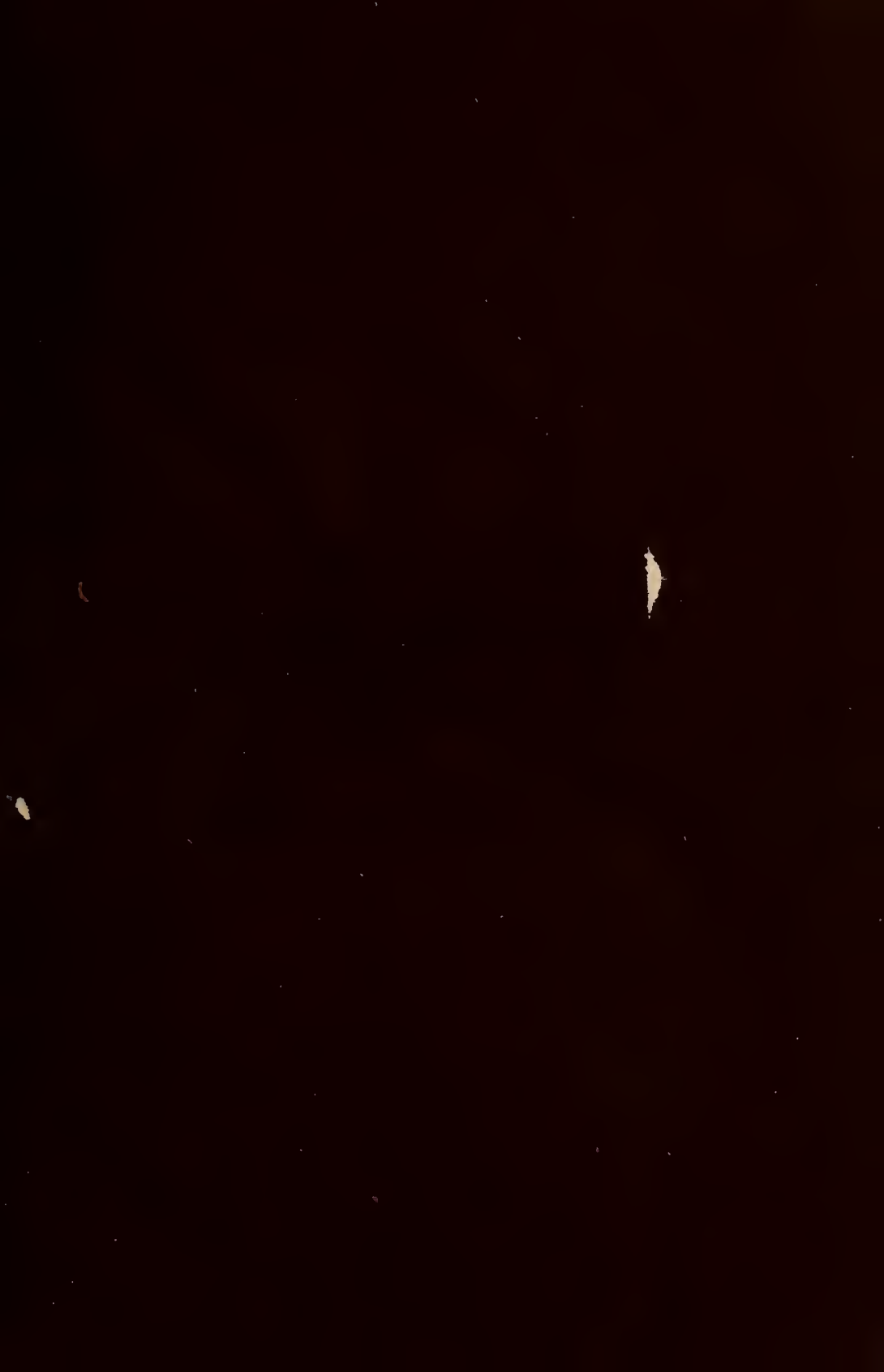


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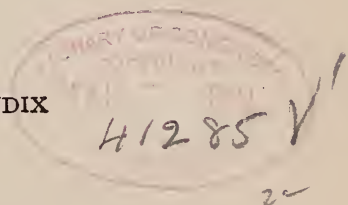
THE LAW
OF
The Protestant Episcopal Church
AND OTHER
PROMINENT ECCLESIASTICAL BODIES

A MANUAL
FOR CHURCH OFFICERS
WITH FORMS

✓ BY
GEO. H. HUMPHREY
COUNSELLOR-AT-LAW

THIRD EDITION, WITH APPENDIX

New York
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PREFACE.

IN presenting this little book to the Churchmen of New York, the writer trusts that he has supplied a real want. He has endeavored to present clearly, and in a concise form, those legal questions which are of most frequent inquiry at vestry meetings. While claiming nothing original for the work, he believes that, although omitting some subjects of rare occurrence, he has presented in an inexpensive form all practical matters likely to engage attention in the ordinary conduct of the business of the Church. It embodies also the very latest legislation and decisions on the important subjects considered.

ROCHESTER, N. Y., *October 6, 1887.*

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THE LAW

OF THE

PROTESTANT EPISCOPAL CHURCH.

CHAPTER I.

OF THE INCORPORATION OF CHURCHES.

WHILE any number of persons may assemble for public worship in accordance with the rites and usages of the Protestant Episcopal Church, it is necessary, in order to secure to them the full privileges of an organized Church, including the power to induct a rector, to elect wardens and vestrymen, to hold real estate, to use a seal, and to maintain an action for the protection of their rights, that they be incorporated under the laws of the States, which with few exceptions throughout the Union make full provision for that purpose.

The benefits of the incorporation are obvious, and consist, 1st, in the protection of the members

of the congregation from personal liability for the debts of the Church ; 2d, the light of the statute law which clearly defines and regulates the duty of the corporate body ; and, 3d, convenience in carrying on and promoting the work of the parish.

Says Chancellor Kent : " It was chiefly for the purpose of clothing bodies of men in succession with the qualities of one single artificial and fictitious being that corporations were originally invented, and for the same convenient purpose they have been brought largely into use. By means of the corporation many persons are capable of acting in perpetual succession like one single individual, without incurring any personal hazard or responsibility, or exposing any other property than what belongs to the corporation in its legal capacity."

2 *Comm.*, 268.

In order to give an organization for public worship legal rights, and to impose on it legal obligations as a corporate body, there must be a special law declaring its existence, or there must be an incorporation under the provisions of the general law relating to religious societies.

Petty v. Tooker, 21 *N. Y., R.*, 267, 271.

Van Buren v. Church, 62 *Barb.*, 495.

The Corporators.

“It shall be lawful for not less than six male persons, of full age, belonging to any church or congregation in communion with the Protestant Episcopal Church in this State, not already incorporated, to meet at any time at the usual place of worship of such church or congregation, for the purpose of incorporating themselves.”

2 *R. S. Banks & Bros.*, 7 *Ed.*, p. 1654.

It will be seen that the persons attending the meeting for the purposes of incorporation must be—

1st. Not less than six in number.

2d. Males of the age of twenty-one years and upward, and

3d. Must belong to a church or congregation *in communion with* the Protestant Episcopal Church.

If, as seldom happens, the parties intending to form the corporation are not already members of the religious body named, or are organizing a church in a place where there was before no Episcopal Society, it would be proper for them to apply to the Bishop or Standing Committee of the diocese to be received into such communion, and they could probably take no further legal action until such recognition was granted.

The statute requires them "to meet at their usual place of public worship." It is necessary, therefore, that they secure a building, hall, or room, and conduct divine service there in accordance with the usages of the Church for a period long enough to make it "their usual place of worship." The meeting of the corporators must be held at such place, and it should be occupied for that purpose probably for two or three months, or certainly long enough to satisfy the terms of the statute.

Any building, room, hall, or compartment will be sufficient as a place for conducting such service.

The Notice.

"A notice of such meeting, specifying its object and the time and place thereof, shall be publicly read in the time of morning service on two Sundays next previous thereto, by the rector or officiating minister, or, if there be none, by any other person belonging to such church or congregation; and shall also be posted in a conspicuous place on the outside door, near the main entrance to such place of public worship."

(As to the notice, see Form No. 1.)

The hour when the meeting shall be held is not

fixed by law, but it should be at a seasonable and convenient hour during the day or early evening.

It is an excellent custom to hold it immediately after Morning Prayer, when the mind is fresh and unwearied, and a spirit of kindness and harmony has been evoked by the solemn influence of the early service.

The place of meeting must be that commonly used for public worship, whether it be only a single room where two or three have been wont to assemble for religious service, or the church edifice already built.

The notice must be not only read, but posted in a conspicuous place on the outside door, near the main entrance to the place of worship.

An election on any day other than that named in the certificate of incorporation is wholly illegal, and the persons then chosen are not a vestry either *de jure* or *de facto*. The vestry of the then expiring year will be still in office, and the only persons empowered to transact the business of the society.

First Church, etc., v. Hillary, 51 Cal., 155.

An election held on the same day, but before the hour specified in the notice, would doubtless be unlawful. But if held a few minutes after, or even an

hour after, it would probably, by analogy to other cases, be sustained. It certainly would be, if no one was deceived as to the time. As if the rector having another engagement at the hour noticed, should leave some one at the place of election to notify all comers that it would take place at any time within an hour later. But any *material* variance in the time would in any event be fatal to the validity of the election.

Reynolds v. McElhone, 20 *How. Pr.*, 454.

The Meeting.

At the time and place specified, at least six persons, including the rector, if there be one, must be present, or there will be no quorum sufficient to continue the work of organization. But it would be competent for a less number to adjourn the meeting to such time during the day or evening as might be necessary to secure a sufficient attendance.

If the requisite number is present, the rector, if there be one, or, if there is no rector, then one of the church wardens or vestrymen, or other person called to the chair, shall preside at such meeting, and receive the votes. As soon as the assembly is

called to order, a clerk should be appointed to keep the minutes of the meeting, and prepare the necessary records. It is made the duty of the presiding officer "to receive the votes." This must incidentally give him power to appoint the tellers, and to reject any illegal ballot.

Who May Vote.

The persons entitled to take part in the meeting must be males of full age belonging to the church or congregation, qualified as follows:

1st. They must have been baptized in the Protestant Episcopal Church, or have been received therein by the rite of Confirmation or by receiving the Holy Communion ; or,

2d. Must have purchased, and for not less than twelve months next prior to such meeting have owned, a pew or seat in such church ; or, during the same period of time, have hired and paid for a pew or seat in such church ; or, during the whole period aforesaid, have been contributors in money to the support of such church.

Any person of full age belonging to the congregation, if he was baptized in the Protestant Episcopal Church, or has been received therein by the rite of Confirmation, or by partaking of the Holy

Communion, may vote without further qualification.

But if not a communicant, or so baptized, he must have owned either a pew or seat in said church for twelve months; or, during the same time, have hired and *paid for* a pew or seat in said church; or, during all that time have been a contributor in money to the support of such church.

The contributions required must have been habitual, and for the use and support of the religious incorporation itself.

It is the duty of the presiding officer to see that none but legal votes are received; but, if they have been received without objection, they cannot afterward be questioned.

Hartt v. Harvey, 22 Barb., 55.

The receipt of illegal votes, too, if challenged, will not avoid the action of the corporators, unless enough shall be received to change the result.

The People v. Tuthill, 31 N. Y. R., 550.

An election or other action of the corporators will not be set aside and declared void merely because illegal votes are received from persons not entitled to vote, if there is still a majority of legal votes in favor of the same.

The Questions to be Decided.

The persons so qualified shall decide by a majority of votes :

1st. The name or title by which such church or congregation shall be known at law.

2d. On what day in Easter week an annual election for church wardens and vestrymen shall thereafter take place.

3d. What number of vestrymen, not less than four or more than eight, shall annually be elected, and shall, together with the rector (if there be one), and the two church wardens, constitute the vestry of the church.

4th. And shall by a majority of votes elect two church wardens and the number of vestrymen that it shall have been determined to be annually elected, which church wardens and vestrymen thus elected shall serve until the next regular election.

The meeting should first determine by a majority of votes what number of vestrymen, not less than four or more than eight, shall annually be elected. This may be by motion or *viva voce* vote, as the term vote signifies merely an expression of the will of the meeting, and the statute does not require a *written* vote, that is, a ballot.

It might be more convenient, also, to determine

in the same way, the name of the church, and the day in Easter week on which the annual election shall be thereafter held.

It would seem, however, more satisfactory to elect the officers of the church by ballot, as that course has received the sanction of long and almost invariable custom, and leaves greater freedom for the expression of the wishes of those present.

No one is eligible to the office of warden or vestryman unless also qualified to vote at such election, as it cannot be that the law would permit lower qualifications for those intrusted with the government of the parish than it requires from those by whom they are chosen.

A majority of all the votes cast is necessary to elect. In the event of more than two tickets being submitted to the electors, a plurality of votes in favor of either would not be sufficient, and a new election would have to be called.

The polls must, in any event, be kept open for an entire hour, and, if the presiding officer or a majority of those present so elect, for a longer period.

As soon as may be after the polls are closed, the presiding officer and two other persons shall make a certificate under their hands and seals setting forth particularly the action of the meeting, and

showing that all things required by the statute were carried out.

(For form of certificate, see No. 2.)

When the certificate has been signed and sealed by the rector, or other presiding officer, and two voters selected by him for that purpose, it must be acknowledged before a notary public or other qualified officer, and recorded with the clerk of the county in which such meeting was held. It should, although not required by law, be entered by the clerk of the vestry in his minutes.

“The church wardens and vestrymen so elected, and their successors in office, of themselves (but if there be a rector, then together with the rector of such church or congregation) shall form a vestry, and shall be the trustees of such church or congregation; and they and their successors shall thereupon be a body corporate by the name or title expressed in such certificate.”

2 *Laws of 1868, ch. 803, p. 1801, § 8.*

Their office continues not only until the expiration of the year for which they are chosen, but also until their successors are duly elected.

When the incorporation shall be complete by recording the certificate, a certified copy thereof

should be sent to the bishop of the diocese for his approval, which he will indorse thereon. If there be a vacancy in the episcopate, then it should be forwarded to the Standing Committee of the diocese, and the approval of a majority of such committee indorsed upon it. Upon presenting the certificate to the next Convention of the diocese, the church is entitled to be received into communion therewith, and to be represented at its sessions by the rector and by three lay delegates chosen according to the rules of the respective dioceses, in some cases by the congregation, but usually by the vestry.

CHAPTER II.

OF ELECTIONS.

THE annual elections for church wardens and vestrymen shall be held at the time in Easter week set forth in the certificate of incorporation, and immediately after morning service.

Notice of the election must be given by the rector, if there be one, or if there be none, or he be absent, by the officiating minister, or by a church warden, for two Sundays next previous to the day so fixed, in the time of divine service, and must specify the place, day, and hour of holding morning service, and that the election will take place immediately thereafter.

The qualifications of voters are the same as those required of corporators, except that every voter must have belonged to such church or congregation *for an entire year*. The obvious purpose of the statute is to secure the government and control of the temporalities of the corporations formed under it to such of its members and supporters as should manifest their attachment to its tenets and their in-

terest in its success by their habitual presence and countenance, and their habitual contributions to its support. Absence from the church, occasioned by long-continued sickness, by a protracted foreign tour, or similar cause, would not disfranchise a member if there was an intention of resuming membership upon recovery or at the end of the journey. The question, like that applicable to civil elections, would depend upon the intention of the elector. If it was his intention to sever his membership with the parish, his right to vote would doubtless be gone; but if it was his purpose to return and resume his membership, his rights as an elector would remain unimpaired.

Habitual attendance, however, at the services of another congregation would seem to be conclusive against the right to vote, especially in the case of one not contributing habitually to the support of the church.

The election must be holden immediately after morning service, and a variance of a few minutes from the time specified in the notice would not be material. The polls must be kept open for one hour, and, in the discretion of the rector, or if required by a majority vote of those present, for a longer period.

At every election, the rector, if there be one, or if there be none, or he be absent, one of the church wardens, selected for the purpose by a majority of the duly qualified voters present; or if no warden be present, a vestryman (selected in like manner), shall preside and receive the votes of the electors, and be the returning officer, and shall enter the proceedings in the book of minutes of the vestry, and sign his name thereto, and offer the same to as many electors present as he shall think fit (usually two), to be by them also signed and certified.

The presiding officer has the direction of the election, or, in the words of the statute, "receives the votes." The meaning of this is that he has the general supervision of the election. He appoints the tellers, has power to reject an illegal vote, and the vote by his direction is counted, and the result announced. He also is the returning officer, and at the conclusion of the election enters the proceedings in the book of minutes of the vestry (practically, however, this is usually done by the clerk of the vestry, by his direction), and asks as many electors present as he shall see fit (not less than two) to sign it also.

(See Form No. 4.)

This certificate is good evidence of the elec-

tion, although executed many months after it was held.

People v. Peck, 11 *Wend.*, 604.

The rector has, of course, the same right to vote as any other member of the congregation, he being the only judge as to its expediency.

Should not the vote result in an election, or if, as sometimes happens, there is a tie between one or more candidates on opposing tickets, at any time before the polls are formally closed, another election may be had. No voter can be deprived of a vote by this course, as it is in his power, and should be his duty, to remain until the polls are closed.

If votes are received by the tellers without challenge or objection, they cannot afterward be questioned.

Hartt v. Harvey, 32 *Barb.*, 55.

Of Vacancies.

A vacancy in the vestry may be created by the death of a warden or vestryman, by his change of residence, *cum animo manendi*, from the place in which the church is located, or by his written or verbal resignation presented to and *accepted by* the vestry. A resignation presented and read, if it receives no formal acceptance, will not avail to create

a vacancy. The trustee may not relinquish his trust without the consent of the vestry.

Council v. Dutch Ch., etc., 4 Lans., 339; 54 N.Y. R., 551.

A vacancy in the vestry can only be filled by a special election ordered for that purpose by the vestry. Notice of it shall be given in the time of divine service at least ten days prior thereto. It must be holden immediately after morning service, and is subject to precisely the same regulations as to the mode of conducting it, and the qualifications of voters which govern the general annual elections.

CHAPTER III.

OF THE VESTRY.

THE vestry consists of the rector, the two wardens and the vestrymen, not less than four nor more than eight, as determined at the time of the incorporation of the society. They are the trustees of the church or congregation, to whom is confided the entire management of its temporalities.

Their Powers.

1st. They are authorized to call and induct a rector of the church as often as there shall be a vacancy therein, and to fix his salary or compensation.

This should always be done by written resolution for that purpose, carefully and clearly expressing the terms of the relation to be assumed, the amount of his salary, and when it shall be payable. The clerk should be authorized to transmit it, and the proceedings fully entered in the minutes of the vestry. As this is the most important act likely to be performed by the governing body, too much care cannot be exercised in fully and distinctly expressing

in writing the terms of the call, so that there need be thereafter no question on that subject.

2d. To have and use a common seal, and renew and alter the same at pleasure.

A seal is an impression upon wax, wafer, or some other tenacious substance capable of being impressed, and a common seal is simply one adopted by the vestry. They may adopt by resolution and make their own any seal whatever, if it be only a piece of white paper attached by wafer or mucilage to the instrument. But an ordinary scrawl such as "L.S." is not sufficient in the State of New York.

Warren v. Lynch, 5 J. R., 238.

Not only is it incident to the corporation to have a common seal, but it may make or use what seal it will. Accordingly it was held in the reign of Edward III. that if an abbot and convent sealed a writing with the seal of a layman, and it was said in the deed "in testimony whereof our common seal is affixed," it was sufficient; for they might change their common seal when they would. But to bind the corporation by deed, the instrument must be sealed with a seal which is theirs either originally or by adoption.

Angel and Ames on Corporations, 185.

Congregation v. Church, 10 How. Pr. R., 484.

In the Southern and Western States, from New Jersey inclusive, a flourish with a pen at the end of a name or a circle of ink, or a scroll, has been held to be a valid substitute for a seal.

4 *Kent's Comm.*, 445.

The organization will not be invalidated by the accidental loss of the seal required to be attached to the certificate of incorporation. Parol proof will be competent to show that it was affixed at or prior to the execution of the instrument.

Medan v. Sherard, 73 *N. Y. R.*, 323.

I know of only two cases where the use of a seal will be necessary. It must be affixed to the certificate of incorporation when an ordinary seal is attached after the name of each signer; and the corporate seal will be required should it become necessary to convey real estate of the corporation.

It will be seldom necessary, therefore, to incur the expense of a corporate seal.

3d. To take into their possession and custody all the temporalities belonging to such church, whether the same consist of real or personal estate, and whether the same shall have been given, granted or devised directly to such church, or to any other person for their use; and also by their corporate

name (that is, the Rector, Wardens and Vestrymen of _____ Church, in the _____ of _____), to sue and be sued in all courts of law or equity, and to recover, hold and enjoy all debts, demands, rights and privileges, and all churches, meeting-houses, parsonages, and burying-places, with the appurtenances, and all estates belonging to such church, congregation or society, in whatsoever manner the same may have been acquired, or in whose name soever the same may be held, as fully and amply as if the right or title thereto had been originally vested in said trustees, and to purchase and hold other real estate, and to demise, lease and improve the same for the use of such church, congregation or society.

But aside from property used exclusively for religious purposes, they may not hold more than enough to yield an annual income of \$6,000.*

It is needless to say that the property must be managed solely for the use and benefit of the church, and in accordance with the rites and usages of the Protestant Episcopal Church. No warden or vestryman can lawfully derive any pecuniary benefit to himself from its management, but the law will re-

* "But by Laws of 1889, chap. 191, they are authorized to hold property not exceeding in value \$2,000,000, and whose yearly income does not exceed \$100,000."

quire him to act unselfishly, and with an eye single to the interests of the parish. The rule emphatically applies, that "He who acts for another shall not in the same matter act for himself." The office is purely a trust, to be exercised solely for the promotion of the interests of religion, as administered by the religious body to which the parish belongs. Any violation of the trust would be restrained and punished by the court.

4th. They have power to repair and alter their churches, to erect others if necessary, to erect rectories for the use of their ministers, and school-houses or other buildings for the use of the society.

This provision would doubtless authorize the erection of guild-houses, of coffee-rooms, and of places for the recreation and improvement of the young people of the parish. They may exercise a wide discretion in this respect, and the courts would doubtless sanction any work whereby the usefulness of the parish would be promoted and extended.

5th. They may make rules and orders for managing the temporal affairs of the church, dispose of all moneys belonging thereto according as the best interest of the church may require, regulate and order the renting of pews, and all other matters relating to the temporal concerns and revenues of the church.

6th. They shall have power to appoint a clerk

and treasurer of their board, and a collector to receive and collect their revenues; to regulate the fees to be allowed each of them, and in the absence of any definite contract for a specified time, to remove either of them at pleasure.

Any proceedings to recover or affecting the title to real or personal property should be in the name of the rector, church wardens and vestrymen of the church. To them alone is entrusted the care of the temporalities of the parish, and they may even institute proceedings to sell the church edifice, without consulting the members of the congregation.

Church v. Church, 46 N. Y. R., 131.

It must always be borne in mind, however, that neither the congregation nor vestry has power to divert the church property from the dissemination of the teachings of the Protestant Episcopal Church as defined in the Book of Common Prayer and the authorized standards of that body, or employ it in conducting any service foreign to its well-settled rules and discipline.

Miller v. Benson, 69 Ill., 27.

Deiderick v. Sampson, 11 Heisk., 523.

Miller v. Gable, 2 Den., 492.

Kinthead v. McKee, 9 Barb., 535.

Isham v. Dunkirk, 63 How. Pr., 465.

Watson v. Jones, 13 Wall., 680.

They cannot sever their connection with the church or unite with any other religious organization, or become independent, save at the expense of impairing their title to all the trust property.

Jones v. Wadsworth, 11 *Phila. R.*, 227.

Any threatened diversion of the revenues of the society, either to maintain a clergyman who has been deposed by proper authority, or for any use inconsistent with the purpose for which it was originally acquired, will be restrained by the courts. And any member of the corporation may maintain an action for that purpose.

Church v. Bowden, 14 *Abb. N. C.*, 356.

Isham v. Tallinger, *Id.*, 363.

In the State of New York the principle is affirmed by statute (*Laws of 1876*, p. 142, ch. 176), which provides that it shall not be lawful to divert the estate, property or revenue of the corporation to any purpose "except the support or maintenance of any church, or religious or benevolent institution, or object connected with the church or denomination to which such corporation shall belong."

But it is equally well settled that the courts will not interfere with the constituted authorities of the church in matters peculiarly within their jurisdic-

tion. Their power is limited to the protection of the civil rights of the corporators and corporation, and to the preservation of the public peace. As to all questions relating to the faith and practice of the church and its members, they will refuse to interfere, but leave the same to those church judicatures to which the parties have voluntarily submitted themselves. They will pass upon them only when necessary to determine the rights of property, or other civil rights dependent upon them.

Grimes v. Harmon, 35 *Ind.*, 198.

So where a clergyman was charged with the offense of omitting the words "regenerate" and "regeneration," in administering the sacrament of infant baptism, it was held that the secular courts would not inquire whether the omission was an offense against the laws of the Church. That was a question of ecclesiastical cognizance alone. The Church should make and construe its own laws, and enforce its own discipline. A rector has not such a vested right in his office, such a property in the right to preach and the emoluments pertaining thereto, as will authorize the civil courts to interfere on that ground to restrain an ecclesiastical court in his trial for an alleged offense against the

canons and discipline of the Church. The contract of employment and for his salary must be construed and enforced in reference to the canons which form a part of it. If he is suspended, his salary is gone.

Chase v. Cheney, 58 Ill., 509.

CHAPTER IV.

OF THE RECTOR.

THE rector is a constituent part of the vestry, is its presiding officer, and no legal meeting can be held without his presence, unless he shall himself have called it in writing, or unless he has been absent from the State at least four months. But in no case whatever, during his absence, can any action be taken to dispose of the lands of the parish, to sell any part of the capital or principal of its personal estate, or tending to impair the rights of such rector.

2 *R. S.*, 1656, § 15.

In the absence of an express agreement to the contrary, the rector is called for life, and is entitled to hold the office while he lives, at the salary originally promised him, without diminution. His connection with the parish can only be dissolved either by his own voluntary act or his deposition by the bishop of the diocese for immoral conduct, or teaching inconsistent with his ordination vows. The law guards jealously his rights, and will not

permit him to be oppressed, or his salary reduced by a factious or discontented congregation. He is entitled at all times to enter the church for the performance of his duties, and to control its use. He may also, like any other individual, sue for and recover his salary if not promptly paid to him.

Ebaugh v. G. R. Church, 3 E. D. S., 60.

The courts bear in mind the fact that one who gives up his life to the work of the ministry, and whose thoughts must, exactly in proportion to his fidelity to his great work, be withdrawn from secular pursuits, needs special protection, and ought not to be dependent for a livelihood on the whims and prejudices of his congregation.

The subject was very thoroughly discussed in *Youngs v. Ransom*, 31 Barb., 49, and the court say: "Mr. Ransom was not called, nor did he agree to preach to this church for a year, or for any specified time, nor at the will of the church or vestry. He was called to take charge of the parish as rector, and settled as such. It is not, and cannot be denied, that the rule or regimen of the Episcopal Church as to the tenure of its parish ministers is that when they have once been placed in charge of congregations, they can neither leave nor be dis-

missed, except by mutual consent, without the intervention of the bishop. Without discussing the power to make, or the propriety of, agreements for the performance of clerical service, limited in time, I think it very clear that when a minister is called or settled in an Episcopal parish without any such limitation, he can only be dismissed, or sever the connection by mutual consent, or by superior ecclesiastical authority on the application of one of the parties. The 33d Canon of the General Convention of 1832 is very explicit to this effect."

I cannot find that the case of *Youngs v. Ransom* has ever been criticised or questioned, and it must be held to settle the law, at least in the State of New York.

The vestry cannot indirectly remove their rector by a reduction of his salary.

The point was expressly adjudged in *Bird v. St. Mark's Church*, 62 *Iowa Rep.*, 567. The action was brought by the rector of St. Mark's Church, Waterloo, to recover the salary originally promised to him, which the vestry, by resolution, had sought to diminish, and the court says: "The salary upon which the plaintiff was employed, constitutes an essential part of the contract. If the defendant could be permitted to reduce the plaintiff's salary

without his consent, it could force him to agree to a dissolution of the pastoral relation, and thus accomplish indirectly what it could not do directly. The right to the salary stipulated at the time the plaintiff accepted the position of rector is a valuable property right secured to the plaintiff by a contract. One party to a contract cannot ignore its provisions or violate them with impunity."

To the same effect is *Batterson v. Thompson*, 8 *Phila. R.*, 251. The rights of the rector were also maintained by the court in *Lynch v. Menzie*, 33 *N.J. Rep.* (4 *Vroom*), 162. In that case the vestry had, by fastening the doors of the church edifice and school-house, attempted to deprive the rector of their use. He brought the action to recover damages for the wrong, and a jury awarded him one thousand dollars. The appellate court, in affirming the judgment, says: "If, then, we adopt the theory of the English cases, and I perceive no reason for rejecting it, that for the purposes of the exercise of his sacerdotal functions, the rector *becomes possessed* of the church buildings and grounds, it will be difficult to devise any pretext in denial of the right of such officer to a civil remedy, if such possession be invaded. Nor does the right of redress for an interference with his rights seem less

clear if we adopt the hypothesis that, by force of his position, plaintiff was possessed of an easement in the premises."

It would seem to follow that as no man can be deprived of a right or subjected to a penalty without an opportunity to be heard in his own defense, if charges are brought against him, they should be regularly presented in writing, and before any prejudicial action is had, he should be permitted to refute any testimony that may be produced against him. That every man is presumed to be innocent until proved guilty applies to him with peculiar force, and the burden of proof must of course rest with the presenters.

Says Hoffman, page 269: "When the sanction of the ecclesiastical authority (he is speaking of the dismissal of a clergyman) is sought, a duty is imposed as well as a power conferred. It cannot concur upon any *ex parte* statements without an examination. The right to be heard is a common-law right, and must be observed before any penalty of any description can be lawfully inflicted."

The rector is not only presiding officer at all meetings of the vestry, but has a right to vote upon all questions there presented. He may have also a right in the event of a tie to have the casting vote,

and thus in effect vote twice. The section of the act which provides that the rector, or one of the church wardens, must preside at every meeting of the board, and have the casting vote, is to be construed as authorizing the chairman, after having voted first with the rest, upon a tie occurring, to emphasize his vote by repeating it. The very question arose in *People v. Rector, etc.*, 48 Barb., 603. There eight vestrymen and two wardens had assembled for the purpose of calling a rector. Five voted in favor of engaging the relator as rector, and five, including the presiding officer, voted against it. He thereupon declared the resolution to be lost. It was held that such declaration amounted to a casting vote, the resolution was not carried, and hence that the relator was not legally called to the rectorship of the church.

At all elections the rector is both the presiding and the returning officer, and his certificate of election is presumptive evidence of the right of the party receiving it to hold the office and exercise its functions.

People v. Lacoste, 37 N. Y. R., 192.

The call of a clergyman is simply a contract, which requires only a meeting of minds, the concurrence of the vestry on the one part and the min-

ister on the other. No formality or ceremony is necessary for that purpose, although for greater certainty it is expedient that the action be in writing and entered on the minutes of the vestry.

The rector has exclusive power over the church edifice, as to granting or refusing its use for public worship or any other purpose. This follows necessarily from the nature of the pastoral charge. He is called to be a teacher of spiritual things. The cure of souls is committed to him, and, as a necessary result, he alone shall determine to whom such trust shall be confided during his absence. By Canon 31 of 1832 it is provided that no clergyman shall officiate in his parish without his express consent. Hence the vestry may not interfere with his rights in that respect. He has also power to control the use of the church at other times and on every day. He may forbid it to be used for church fairs, for secular entertainments, for lectures, or any purpose inconsistent with religious uses. In the institution office the keys are delivered to him as a symbol of the delivery of the church edifice itself, and the inference is irresistible that *virtute officii*, he has absolute control of it. The church is simply an instrument of his office, committed to him to consecrate it to the Lord, to offer in it the sacrifice of

praise and thanksgiving, to teach and celebrate in it the sacraments of our holy religion. Its direction is intrusted to him for that object, and it is his duty to see that it is sacredly and exclusively devoted thereto, and kept free from all unhallowed, ordinary and common uses.

The same rule must apply to the other buildings used by the church for the instruction of the young, for guilds, and other ecclesiastical purposes.

Hoffman's Law of the Church, 85.

The direction of the music used in the church is committed to the rector. Canon 22 provides :

“§ I. The selection of the psalms in metre and the hymns which are set forth by authority, and anthems in the words of Holy Scripture, are allowed to be sung in all congregations of this Church before and after Morning and Evening Prayer, and also before and after sermons at the discretion of the minister, whose duty it shall be, by standing directions, or from time to time, to appoint such authorized psalms, hymns, or anthems as are to be sung.”

“§ II. It shall be the duty of every minister of the Church, with such assistance as he may see fit to employ from persons skilled in music, to give orders concerning the tunes to be sung at any time

in his church, and especially it shall be his duty to suppress all light and unseemly music, and all indecency and irreverence in the performance by which vain and ungodly persons profane the service of the sanctuary."

While the salary and terms of employment of the choir belong exclusively to the vestry to determine, the direction of the choir belongs to him. He must determine as to rehearsals, and as to the character of the music. It is simply an auxiliary to his work, and therefore must be entirely under his control. It is the better opinion that he may select the persons composing the choir, and it is certain that any question as to whether it should be a surpliced choir, a quartet, or chorus, belongs to him.

No assistant minister may be called without his consent ; while the vestry must be consulted as to the necessity or utility of calling an assistant, and must decide as to the terms and period of employment, the rector must be permitted to determine the question who shall be selected as a worthy coadjutor, and fitted to aid him in his most important work. There can be but one rector, and it is eminently proper that he should not be hampered in his office by one likely perhaps to mar, impair, or destroy his usefulness, and upon that most delicate

of questions he must, in the nature of things, be the best and only judge.

The term "assistant rector," is unknown to the common law, although in one single instance, *sui generis*, it appears in a legislative enactment. By chapter 120, of the *Laws of N.Y. for 1878*, provision is made for an associate rector of St. Paul's Church, Buffalo, by which he was made a member of the vestry, and authorized to preside in the absence of the rector at meetings of the vestry and at elections. He was also empowered to call meetings. But it was provided that at those so called no action should be taken to dispose of the real estate, to sell personal property except to pay debts, or to impair in any manner the rights of the rector.

The fact that a special act was required defining his duties would seem to indicate that in all things, as the necessity of the case requires, the assistant minister is subordinate to the rector, and subject to his direction, unless in a special case special legislation may be necessary to change the rule. There cannot be two chiefs either in the family or in that larger family which we call a church. Nor is there any law authorizing the assistant minister to act as a member of the vestry, or to preside at its meetings.

His Duty.

This branch of the subject needs but few words, and is best expressed in the office of the ordering of priests, in which he promises "so to minister the Doctrine and Sacraments, and the Discipline of Christ, as the Lord hath commanded, and as this Church hath received the same, according to the Commandments of God."

As Hoffman says with great power, "The vow of the rector becomes the right of the congregation" (page 87). This right is violated if he teaches or allows another to teach an anti-trinitarian doctrine, or other dogma opposed to the plain teachings of the Book of Common Prayer.

He has no right to leave his congregation against their will without the consent of the Bishop, although the only penalty incurred by such action is exclusion from the privileges of the Convention of the diocese.

Title II., Canon 4.

It is needless to say that in all spiritual matters the rector must, from the very nature of his office, have in his parish supreme control. He is not subject to the dictation of the vestry, and the supreme impropriety on their part of any attempt to influ-

ence his teaching is too obvious to need comment. To him has been committed authority to feed and guide the flock entrusted to his care, and his right to teach and direct them may not be questioned by all or any of the members of his charge. This has been the study of his life. To qualify him for it, he has received the most careful training, and as well might the patient seek to instruct the trained physician, or the client his counsel learned in the law. Should he urge any doctrine inconsistent with the plain teaching of Scripture or the Prayer-Book, it would be the duty of the Bishop, upon proper proceedings prescribed by the canons of the Church, upon complaint duly presented to him, to investigate the matter. But no one else may assume to take action on the subject. To the rector the sacred trust has been given by the Church of God to bring all committed to his care "into that agreement in the faith and knowledge of God, and to that ripeness and perfectness of age in Christ, that there be no place left in them for error in religion or for viciousness of life." To this his all has been consecrated, and no man may interfere with the discharge of this solemn office and work of a priest in God's Church save the Bishop only whom he has vowed reverently to obey, "following with a glad mind all

his godly admonitions, and submitting to his godly judgment."

It would be well always to remember that to the rector has been given authority "to execute the office of a Priest in the Church of God," once committed to him by the imposition of divinely constituted hands, with power "to preach the word of God, and to minister the Holy Sacraments in the congregation to which he has been lawfully called."

Would that those who are inclined to criticise or oppose their duly appointed pastor might be induced reverently to read the office "for the ordering of priests" and learn how solemn and important is the office committed to his charge, and how thoroughly and entirely it has been entrusted to him.

CHAPTER V.

OF VESTRY MEETINGS.

NO legal action of a vestry can be had except at a meeting regularly called, or unless all the members of the vestry are present. If every member be present, as the only object of the notice is to secure such presence, the action of the meeting would doubtless be valid, although legal notice was not given. Each member of the vestry has a right to be consulted as to every proposed measure, and that right can only be waived by his failure to attend the meeting after being duly notified thereof.

Constant v. Rector, etc., 4 Daly, 25.

The Notice.

No meeting of the vestry shall be held unless at least three days' notice thereof shall be given, in writing, under the hand of the rector or one of the church wardens. This provision, however, does not apply to the first meeting after an election, when more haste is requisite, and twenty-four hours notice thereof shall be enough.

The notice of meetings subsequent to the first would not, perhaps, be necessary where the vestry have, by a by-law or resolution, fixed the time for meetings, as, for instance, the first Monday evening of the month. All members of the vestry are chargeable with notice of such resolution or by-law.

Smith v. Lane, 21 N. Y. R., 296.

It is, however, the better practice if anything of moment is contemplated, to give the notice.

It may be sent by mail, and the law will presume its reception by the party to whom it is properly addressed.

Cors v. Otis, 100 N. Y., 446.

But personal service at least three days before the meeting, if an important one, would save any question as to its legality. Should notice be mailed and not received, the meeting would not be legal without the personal presence of the person to whom it was addressed. If the person entitled to notice is present without it, in that case the purpose of the notice is answered, and no question arises on the subject.

A religious body is not bound by the acts of its trustees, acting personally, nor by the act of a majority of them convened together, unless such

convention is an authorized official meeting, pursuant to a call addressed to all the trustees.

United Brethren Ch. v. Van Dusen, 37 *Wis.*, 54.

St. Patrick's Ch. v. Gavalin, 82 *Ill.*, 170.

Moore v. Rector, 4 *Abb. New Cas.*, 51.

Bank v. St. Anthony's Church, 109 *N.Y. R.*, 512.

If all the members of the vestry are present, although no notice has been given, and proceed without objection to the transaction of business, the necessity of notice will be waived, and their action will be legal. But if any person not notified is absent, or, if present, objects to the legality of the meeting, all extraordinary proceedings are illegal. When some of those entitled to notice are present without it, and the others have had due notice, if they proceed to business it is a legal waiver of notice, the meeting is regular, and its action valid.

Angel and Ames on Corporations, 457.

The Quorum.

No such board shall be competent to transact any business unless the rector, if there be one, at least one of the church wardens, and a majority of the vestrymen are present. But if the rector shall have been absent, from the State for four calendar months, or shall, in writing, have called the meeting and be absent, then, a warden and a majority of the vestry-

men being present, the board may transact any business not involving a disposition of the property of the corporation, or tending to impair the rights of the rector.

To constitute a legal board there must be present the rector, a warden, and a majority of the vestrymen, except when the rector shall have been absent as above stated. "There are thus three integral parts of the body which personally, as in the case of the rector, or by representation, as in the cases of the wardens and vestrymen, must attend."

Hoffman, 71.

The majority of the vestry must be of the entire legal number, and not of those actually in office. Thus in the event of three of the vestrymen having resigned, when their number is eight, five would still be necessary to constitute a quorum.

The statute requiring a majority of the vestrymen contemplates a majority of the legal number, and not merely of a less number actually in office.

Moore v. Rector, etc., 4 Abb. N. C., 51.

No legal meeting can be held--

1st. Where the rector is absent, unless he shall himself have called the meeting, or shall have been

for at least four calendar months absent from the State.

2d. When both wardens are absent.

3d. If less than a majority of the vestrymen are present.

The Presiding Officer.

The rector, if there be one, and if not, then the church warden present, or if both church wardens are present, then the church warden who shall be called to the chair by a majority of the votes, shall preside.

Business : How Conducted.

Each member of the vestry has a right to vote, and they are upon an equality of power as to every corporate resolution and act, except that the chairman has the casting vote. The vote of a majority of the members present will be absolutely controlling. Thus, if five vestrymen, a warden, and the rector are present, the united vote of any four of them would be sufficient to decide any measure proposed.

No valid act can be performed, not even that of adjourning the meeting, except by a majority of those present.

Business transacted at an irregular meeting, if

subsequently ratified and approved at a meeting duly called at which a quorum is present, will thereby become valid.

After the meeting has been duly organized, the withdrawal of the rector, or of a warden, or of a vestryman cannot prevent the completion of business already commenced, or even the transaction of new business; otherwise the rector, or warden, or vestryman would, by withdrawing, be able to defeat the voice of the majority, and in substance hold a veto on their action.

Hoffman, page 77.

The presiding officer is bound to submit every question presented for the consideration of the vestry. There can be no doubt of his obligation to do so in every case of a proposition properly within the province of the vestry to act upon. On the other hand, it is equally clear that he is not bound to put questions or resolutions to vote tending to censure or criminate himself,

While the vestry may call the rector, they can take no action for his dismissal, or, as such, investigate any charges against him. A clear majority of the adult male members of the church must concur in asking that the matter be presented to the bishop for his consideration.

A canon on the subject was adopted by the Convention of 1865, and is as follows :

“In case a minister who has been regularly instituted or settled in a parish or church be dismissed by such parish or church without the concurrence of the ecclesiastical authority of the diocese, the vestry, or congregation, of such parish or church shall have no right to a representation in the Convention of the diocese until they shall have made such satisfaction as the Convention may require ; but the minister thus dismissed shall retain his right to a seat in the Convention, subject to the approval of the ecclesiastical authority of the diocese.”

“And no minister shall leave his congregation against their will without the consent of the ecclesiastical authority aforesaid ; and if he shall leave them without such concurrence, he shall not be allowed to take his seat in any Convention of this Church, or be eligible into any church or parish until he shall have made such satisfaction as the ecclesiastical authorities of the diocese may require ; but the vestry, or church shall not thereby be deprived of its right to a representation in the diocese.”

By Canon 4 of Title II. § 4, it is provided that in

case of any difference between the minister and parish, or vestry, as to severing or continuing the relation existing between them, which may not be satisfactorily settled by the godly judgment of the bishop alone, or which he may decline to consider without counsel, the bishop (or if the diocese be vacant, any bishop selected by the ecclesiastical authority), acting with the advice and consent of the Standing Committee of the diocese, or missionary jurisdiction, or with that of the presbyters of the said Standing Committee (if both parties shall assent to such limitation in writing), shall be the ultimate arbiter and judge, and refusal to accept and comply with the arbitration and judgment on the part of the minister aforesaid, shall not work a continuance of lawful and canonical rectorship or settlement beyond the date fixed conditionally or otherwise for its termination by such arbitration and judgment, should such termination be recommended and required, but such pastoral connection shall, unless otherwise agreed by the parties, cease and terminate as therein required. But such refusal shall subject the minister so refusing to inhibition by the bishop aforesaid from all ministerial offices and functions within the diocese, and such refusal on the part of a parish shall disqualify it from rep-

resentation in the Convention until full compliance with the judgment.

This canon, however, applies only to dioceses approving it, and having no other regulations on the subject.

CHAPTER VI.

OF THE POWER OF THE VESTRY OVER THE REAL ESTATE OF THE CORPORATION.

1st. To Sell the Same.

THE vestry may, by order of the court, sell and convey the real estate of the corporation. This power belongs to the vestry, to whom the corporators intrusted the management of the temporalities of the church.

Church v. Church, 46 *N. Y. R.*, 131.

The conveyance can only be authorized for good reasons, showing that the corporation will be benefited thereby. The court has no power to approve a sale for the purpose of closing up the existence of the society and distributing its property. The trustees have no power to do this, and the court cannot enlarge their powers. The court cannot approve of any plan for the application of the proceeds of the sale of real estate which does not regard the interests of the society as an organization, to continue for the purposes of its creation.

Wheaton v. Gates, 18 *N. Y. R.*, 395.

The weight of authority seems to indicate that the vestry may mortgage the property without an order of the court for that purpose.

Manning v. Society, etc., 27 Barb., 52.

Baptist Society v. Clapp, 18 Barb., 35.

Still, this right has been questioned, and it would probably be safer to apply to the court for authority to make the mortgage.

The sale must be authorized by a majority vote of the vestry at a meeting regularly called for that purpose.

The petition must

1st, be addressed to a justice of the Supreme Court, or to the County Court of the county in which the land sought to be sold is located, and entitled as in Form No. 5.

2d. Must be in the name of the rector, church wardens and vestrymen, or if there be no rector, must set forth that fact, and be in the name of the church wardens and vestrymen.

3d. It must aver the incorporation of the society.

4th. Their ownership of the property; and

5th. Must set forth the reasons which render a sale expedient; and

6th. Ask for an order authorizing the sale and

directing what disposition shall be made by the vestry of the proceeds.

It may be verified by the rector, or any one else cognizant of the facts, and is usually signed by the rector, wardens, and vestrymen. The clerk, however, or any other suitable person, may by resolution be authorized to sign and present the petition on behalf of the vestry. The petition in that case should state the fact. The court may in its discretion grant the order, and the deed executed in pursuance thereof should recite the order and the facts giving the court jurisdiction to make it.

(See Forms Nos. 6, 7 and 8 for petition, order, and conveyance.)

Of the Pews.

By the laws of 1876, ch. 176, it is provided that "the rector, church wardens, and vestrymen of any church incorporated under the laws of this State shall administer the temporalities thereof, and hold and apply the estate and property belonging thereto, and the revenues of the same, for the benefit of such corporation according to the rules and usages of the church or denomination to which said corporation shall belong, and it shall not be lawful to divert such estate, property or revenue to any

purpose except the support and maintenance of any church or religious or benevolent institution or object connected with the church or denomination to which such corporation shall belong."

"Each and every of the corporations aforesaid may receive, use and apply all rents and means derived from pews of the respective churches, in addition to the annual income, limited by any statute now in force relating thereto."

The renting of the pews will be generally conducted by a committee appointed by the vestry for that purpose, and may be verbal if for not more than one year, although it would be better if by an agreement printed or written for that purpose. The following brief form would be sufficient :

"The vestry of St. ——— Church have leased to ——— pew No. —, or — sitting in pew No. —, for which he agrees to pay to the treasurer of said church \$—— per annum, payable quarterly in advance. Dated ———.

Signed by _____

Chairman of Committee and Lessee of Pew.

The leasing, if for a definite time, will be binding on the parties for that period, but if no time is expressed in the contract, possession of the pew may be surrendered at the end of any quarter.

In some parishes in this State pews have been sold to and are owned by individuals, and were generally so conveyed subject to the payment of an annual assessment or rent, and in some cases without any condition whatever.

It is settled by many authorities that the owner of a pew has only a usufructuary interest ; that is, the right to use it. He may convey it by deed duly sealed and acknowledged, but will convey thereby only the privilege of occupying it ; his interest does not entitle him to an injunction restraining the trustees from pulling down the edifice and building a new one.

Voorhees v. Church of Amsterdam, 17 Barb., 103.

The pew owner takes a limited estate, a right to use the pew as long as the house may stand, subject to the more general right of the corporation in the soil and freehold.

Shaw v. Beveridge, 3 Hill, 26.

Baptist Ch. v. Witherell, 3 Paige, 302.

Freleigh v. Platt, 5 Cowen, 494.

Haney v. St. Peter's Ch., 2 Ew. Ch. Rep., 608.

Guy v. Baker, 17 Mass. Rep., 435.

Perrine v. Levitt, 10 Id., 325.

If the edifice becomes useless from dilapidation,

or is destroyed by fire, or any casualty, the right of the pewholder is gone.

And so, if from decay, or other injury, the house has to be rebuilt; but, if for mere convenience or purposes of expediency only, and not from necessity, the pew is taken, the owner has a right to indemnity.

Neither the corporation nor the vestry can, for the purposes of mere improvement or embellishment, deprive the owner of his property—certainly not without compensation.

If, however, from the condition of the building or pew, the latter becomes useless, and it becomes necessary to rebuild the pews instead of repairing them, it may be done without compensation to the owner, and he cannot complain that another plan or arrangement of the pews is adopted.

It was held in *Cooper v. Presbyterian Church*, 32 Barb., 222, in an elaborate opinion by Bockes, J., that “a pew owner has no separate or individual property in the timber or materials out of which the house, or any of its parts, is composed, but his right is that of occupancy of the pew during public worship, and this right of occupancy must yield to circumstances of necessity, convenience, and expediency, growing out of the rights in common of the society.”

“These principles are the plain dictates of natural justice and cultivated reason, and are so eminently just in their application as to seem a necessary concomitant of church property in our country.”

It was held in *Bronson v. St. Peter's Ch.*, 3 *Law Rep.*, 390, that “the pew owner has no claim that the relative situation or internal position of the church pews will not be changed, nor that the church edifice shall remain unaltered.” In that case a motion was made by certain pew owners for an injunction to restrain the corporation from proceeding with a contemplated alteration which involved the demolition of their pews. Judge Maynard denied the motion, holding that the trustees, acting in behalf of the corporation, had the right to make alterations under Sec. 4 of our statute, which gives them power “to repair and alter their churches and meeting-houses, and to erect others if necessary.”

But it seems equally well settled that if the change is made merely for convenience, as if A owns the two front pews of the church edifice, and the vestry determined to extend the chancel, by reason of which improvement he is deprived of his pews, that he shall be entitled to indemnity, either by

having assigned to him two new pews, or by pecuniary compensation. An action would lie for damages under such circumstances, although the court would decline to grant an injunction restraining the proposed improvement.

Hoffman's Law of the Church, 245.

A pew holder has no such right in the pew, or the ground on which it stands, as will prevent the sale of the church edifice and soil, if the assent of the Supreme Court is obtained.

A sale or permanent lease of a pew is subject to this condition, and the purchaser takes with presumptive knowledge of and assent to the same.

Wheeler v. Gale, 18 *N. Y. Rep.*, 395.

The pew owner's right in a pew is an incorporeal hereditament, it is more than an easement, it is connected with the land, and has some of the qualities of realty. It passes to the heir-at-law.

3 *Kent's Com.*, 402.

It requires a writing under seal to pass the title.

St. Paul's Ch. v. Ford, 34 *Barb.*, 16.

First Baptist Ch. v. Bigelow, 16 *Wend.*, 28.

Owners of pews have an exclusive right to their

possession and occupation for purposes of worship. The remedy, by an action of trespass, for a disturbance of the owner in the possession of his pew is, therefore, the only appropriate remedy.

Shaw v. Beveridge, 3 *Hill*, 26.

CHAPTER VII.

OF MISCELLANEOUS PROVISIONS.

1st. Of Changing the Number of Vestrymen.

THE number of vestrymen cannot be less than four nor more than eight, but may be changed to any number, between three and nine, by the following action:

At any regular meeting of the vestry a resolution may be adopted to change the number of vestrymen to any number within the limit just named.

At the time notice of the annual election is given, there shall be added to it, as follows: "And at the same time a resolution adopted by the vestry of this church, at a regular meeting held on the day of , 18 , that the number of vestrymen thereof be changed from to will be submitted to the voters for their adoption or rejection."

At the time of the election the electors shall vote for or against it. If the resolution is adopted by a majority of the legal votes, a certificate shall be prepared setting forth the adoption of the resolu-

tion by the vestry, that notice was duly given of the submission of the same to the electors of the church, and that at the time of the election it was duly ratified and adopted by a majority or unanimous vote of those present.

(See Form of certificate No. 12.)

Such certificate shall be signed by the rector and two electors chosen by him for that purpose, who shall then acknowledge the same before a notary public or other officer authorized to take such acknowledgment.

Upon recording the certificate with the Clerk of the County wherein the church is located, the proposed change is effected.

2d. Of Changing the Name.

The corporation may, if for any reason its name has become incongruous or inconvenient, or in the event that the location or character of such corporation will be more correctly or effectually designated by such change, apply to the Court to alter the same.

The adult male members of the church, at a meeting regularly called for that purpose, and of which notice ought to be given on two successive Sundays prior thereto, may determine, by a major-

ity vote, to change the title of the church. The resolution should also authorize the rector, clerk, or other suitable person to prepare and present to the Court a petition for that purpose.

The person so authorized may thereupon present to a judge of the County or of the Supreme Court a verified petition setting forth :

1st. The incorporation of the religious society.

2d. The facts which render the corporate name incongruous or inconvenient, or the proposed name more suitable, and also that at a meeting of the incorporators, regularly called for that purpose, a resolution was adopted by a majority vote (or unani-
mously) directing the adoption of a new corporate title, and authorizing the petitioner to present the matter to the Court.

Also a prayer that the corporation be allowed to change their corporate title and assume a new one.

The officer to whom the petition is addressed, may thereupon grant an order directing the proposed change, and requiring the order to be inserted once in a newspaper recorded in the County.

When the order has been entered and published, upon filing proof of such publication, together with the petition, the corporate title is fully changed.

(See Forms Nos. 5 and 6.)

3d. Of the Consolidation of Religious Societies.

Any two religious incorporated societies may consolidate and unite as a single corporation—

1st. At a meeting of the vestry of each church, regularly called as required by law, a resolution should be adopted by each body authorizing the consolidation of the two societies, determining the name of the proposed new corporation, the names of those who shall be church wardens and vestrymen to serve until the next annual election, who shall be the rector, and any other terms which may be made part of the agreement.

The agreement may be signed by the rector, church wardens, and vestrymen, or by some person authorized by them to sign it.

It should then be acknowledged, and presented to the Bishop and Standing Committee of the Diocese for their approval. Upon the agreement should be indorsed, "We, the Bishop and Standing Committee, of the Diocese of — hereby approve the within agreement, and consent to the consolidation therein named, upon the terms therein also stated. Dated —."

This approval should be acknowledged, although not absolutely necessary.

Each of the said corporations may thereupon

make its separate petition to the Supreme Court in the judicial district in which such corporations are situated, for an order for such union and consolidation; setting forth in such petition the reason of such union and consolidation, the agreement made as herein before stated, its presentation to and approval by the Bishop and Standing Committee of the Diocese, a statement of all its property, real and personal, all its debts and liabilities, and the amount and sources of its annual income.

Upon such petition from each of said corporations so proposing to be united and consolidated, and upon the said agreement, satisfactorily proved or certified, the Supreme Court may, in case it shall deem it proper, make an order for the union and consolidation of such corporations, determining all the terms, and conditions, and provisions thereof.

All parties interested therein may be heard on such petition. Any person having an interest, and serving notice to that effect on the clerk of the vestry, would doubtless be entitled to notice of hearing.

When such order is made and entered according to the practice of the Court, the said corporations shall be united and consolidated into one corporation by the name designated in the order, and it

shall have all the rights and powers, and be subject to all the obligations of religious corporations under the act in reference thereto.

The order should be entered in the office of the Clerk of the County where the churches are located, and a certified copy entered in the minutes of the new vestry.

And thereupon all the estate, rights, and property of whatsoever nature belonging to either of said corporations shall, without further act or deed, be vested in and transferred to the new corporation as effectually as they were vested in or belonged to the former corporations, and the said new corporation shall be liable for all the debts and liabilities of the former corporations in the same manner and as effectually as if said debts or liabilities had been incurred by it.

Laws of 1880, ch. 167.

(See Forms 10 and 11.)

CHAPTER VIII.

OF DIOCESAN TRUSTEES.

By the Laws of 1876, chap. 110, it was provided that any "*Diocesan Convention*, presbytery, classis, synod, annual conference, or other governing body having jurisdiction over a number of churches, congregations or societies of any church or religious denomination in this State, now or hereafter to be constituted or established, and not already incorporated, at any stated meeting thereof, by a plurality of voices to elect any number of discreet persons, not less than three nor exceeding nine in number, as trustees to take charge of the estate and property belonging thereto, and to transact all affairs relating to the temporalities thereof. The presiding officer and clerk of such governing body shall immediately thereafter certify, under their hands and seals, the names of the persons elected trustees as aforesaid, in which certificate the name or title by which the said trustees and their successors shall be known shall be particularly mentioned, which said certificate being duly acknowledged by the said

presiding officer and clerk, shall be recorded by the Clerk of one of the Counties situated in whole or in part within the bounds of the jurisdiction of such governing body, or in the book kept for the record of religious corporations; and such trustees and their successors shall thereupon, by virtue of this act, be a body corporate by the name or title expressed in such certificate."

POWERS OF TRUSTEES.—"§ 2. Such trustees shall be capable of taking, for religious, educational and charitable purposes, by gift, devise, bequest, grant, or purchase, and of holding and disposing of the same, any real and personal estate held for the benefit of any such governing body, or of any parish, congregation, society, church, chapel, mission, religious, benevolent, charitable or educational institution, existing or acting under such governing body at the time of their election, or which had then, or may thereafter be given for any such purposes, provided that the net yearly income received from the said property shall not at such time exceed the sum of \$25,000."

"§ 3. Whenever any church, parish or religious society in connection with any such governing body shall become extinct, or shall cease to maintain religious services therein for two consecutive years, by

reason of the death or removal of its members, or for any other cause, it shall be lawful for the trustees elected by such governing body as aforesaid to take possession of the temporalities belonging to such extinct church or society, and manage or dispose of the same, and apply the proceeds thereof to any of the objects mentioned in the second section of this act. The governing body to which such church or society belongs shall determine when any church or society has become extinct, or has ceased to maintain religious service for two consecutive years—provided that no church or society having more than thirteen resident members shall be declared extinct unless it has failed for two consecutive years to maintain religious service therein.”

“§ 4. The trustees elected by virtue of this act shall hold their offices at the pleasure of the governing body by whom they are elected, and all vacancies shall be filled by such body as they occur.”

2d. Of Trustees of the Parochial Fund.

The Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York were incorporated March 26, 1863, by chapter 59 of the Laws of that year.

The trustees consist of six laymen holding office

for three years, of whom two are elected yearly by the Convention of the Diocese. The Bishop of the Diocese is *ex officio* a member of the board.

They are authorized by § 4 of the act to receive and hold by deed, conveyance, or last will and testament, for the accumulation of the Parochial Fund, real and personal estate to such an amount that the annual income thereof shall not exceed \$30,000, to be devoted equally to clerical support and the erection of parsonages.

They are also authorized by chapter 500 of the Laws of 1875 "to receive by donations, grant or devise real or personal property, and take and hold the same for the purposes of clerical support, parsonage aid in particular parishes, parochial and theological schools, and missions in said diocese, for a house or place of residence for the bishop of said diocese, or for any religious, charitable, or educational institution within said diocese, and they shall hold and apply the same in strict accordance with the conditions annexed to any such donation, grant or devise, if not incompatible with the laws of this State; and they may receive such donations, grant, gift, or devise when made to take effect upon any specified contingencies or conditions not repugnant to any law of this State; and in cases where the Bishop of the

Diocese has been heretofore, or shall be hereafter, made a testamentary trustee for any of the purposes contemplated by this act, he shall have the right to surrender the said trust to the trustees of this fund at will, and in case of his not doing so before his death, the said testamentary trust shall inure on his death to the trustees of this fund, subject to all the conditions prescribed by the donor; but the annual income accruing from the property said trustees are allowed to hold by this and the 4th sections shall not exceed \$250,000.”*

A similar body was organized at the creation in 1868 of the Diocese of Central New York, whose functions are clearly defined by the admirably drawn Act of 1887, chapter 106, as follows: “ They shall have power to take and receive by gift, grant, devise or bequest, any property real or personal, and hold the same; *first*, in trust and for the use and benefit of any congregation or parish which may be incorporated and in union with the Convention of the Protestant Episcopal Church in the Diocese of Central New York; or, *second*, in trust for the assistance or sup-

* They were also, in 1888, clothed by the Legislature with the same powers as those conferred on the Trustees of the Diocese of Central New York, by the act hereinafter next quoted.

Laws of 1888, ch. 308.

port of any such mission or missionaries in said diocese as may be approved of by the bishop. The money or other property so used for missionary purposes to be expended under the general direction of the bishop thereof, or the bishop in council with the missionary board of said church in said diocese, or in case of vacancy in the bishopric, or an extended absence of the bishop, then under the general direction of the Standing Committee in said diocese ; or *third*, in trust to assist weak and feeble parishes in said diocese to support their ministers and Sunday-schools, or to build or repair their church edifices or parsonages; and *fourth*, in trust for the assistance or support of any parochial, divinity, or theological school, or any scholarship in any such school in said diocese which may be approved by the bishop ; or, *fifth*, to institute scholarships in St. John's Military School for Boys, which is an incorporated church school within said diocese, or otherwise to aid in the support of said school, or any successor thereof ; *sixth*, for the general use and purposes of the church in said diocese in cases where no special or particular use or purpose of the gift is attached thereto ; provided always that the trustees shall hold and invest or apply each fund, or the interest or income thereof, in strict accordance with the terms of the trust or

condition attached to it by the gift, grant, devise or bequest producing such fund, so that in no case shall the property given, granted, devised or bequeathed for one purpose or object be applied or used for another ; and provided also that the net annual income of any fund shall not exceed the sum of \$30,000."

The act is a model one, and leaves nothing to be desired, so far as concerns the clear expression of the intention of the framers of the law, and its lucid and exact definition of the power and duty of the board.

A valuable function of the trustees in both dioceses is to hold church property for the benefit of any parish within the respective dioceses, and apply the same in strict accordance with the conditions annexed, to any such donation, grant, or devise.

Many vestries have availed themselves of the privileges of the act, and have conveyed their property to these boards. The object of the grant is to save the property from sacrifice or loss, by reason of any indebtedness, which may have been incurred by the improvident action of vestries.

The trustees may doubtless hold it free and clear from any indebtedness incurred after its conveyance. But as to existing creditors, it would seem that it could be granted only subject to the payment of their claims, and, as to them, must be presumed

fraudulent, and liable to be set aside upon action instituted for that purpose.

Cole v. Tyler, 65 *N. Y. R.*, 73.

The conveyance to the trustees should define carefully the conditions on which the property shall be held, and especially what disposition shall be made of it in the event that the congregation shall become extinct or depart from the usages or doctrine of the Protestant Episcopal Church.

Conveyance to Trustees in the Diocese of Western New York.

By the laws of 1884, ch. 125, it is provided that after a resolution shall be passed by the vestry authorizing a conveyance or transfer of the real or personal property of the society to the "Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York," they shall call a meeting of the persons entitled to vote for church wardens and vestrymen of such society, to be held at the usual place of public worship of the congregation of such society, on some week day not less than twenty nor more than thirty days thereafter.

How the Meeting is Called.

Such meeting shall be called by posting a notice thereof, in a conspicuous place, on the outer door of

such usual place of worship, at least twenty days before the day of such meeting; which notice shall specify the object of such meeting, and the time and place thereof, and shall contain a copy of the afore-said resolution of the vestry.

A copy of such notice shall be publicly read in the time of morning service, on two Sundays next previous to the day of such meeting, by the rector or officiating minister, or, if there be none, by any member of the vestry of such religious society.

(For form of notice, see No. 15.)

ELECTION—HOW CONDUCTED.—The election is conducted precisely in the same manner as the annual election for wardens and vestrymen, with two exceptions: 1st. At such meeting the only question submitted to the electors is, “Shall the resolution of the vestry be approved?” which shall be decided by the voters by ballot, and by a majority of the votes cast, the ballots being inscribed either “for the resolution of the vestry” or “against the resolution of the vestry;” and 2d. That the entry of the proceedings on the minutes of the vestry shall be subscribed by the presiding officer and *three* others of the electors present.

Certificate of Result.

In case a majority of the votes cast at such meeting shall be in the affirmative on said question, the presiding officer, together with not less than three others of the voters present, shall make a certificate under their hands and seals, stating that such meeting was duly held, the time and place of holding the same, the name of the presiding officer, and that such meeting was held in pursuance of the notice by which the same shall have been called as hereinbefore provided; and a copy of such notice shall be incorporated in such certificate. Such certificate shall also state the whole number of ballots cast at such meeting; what number of them was cast "for the resolution of the vestry," and what number was cast "against the resolution of the vestry." The said certificate shall be duly acknowledged by each of the persons subscribing the same, or its execution shall be duly proved before some officer authorized to take the acknowledgment or proof of deeds of real estate, and shall be recorded in the office of the Clerk of the County in which such meetings shall have been held.

(For form of certificate, see No. 16.)

Such certificate, or a duly certified copy thereof,

shall be presumptive evidence of the truth of all matters therein stated.

When the certificate shall be recorded as aforesaid, and a certified copy delivered to one of the vestry, it shall be the duty of the vestry to cause the property named in the certificate to be conveyed or transferred to the Trustees of the Parochial Fund aforesaid.

(For form of deed, see No. 17.)

The property is to be held by such trustees solely in trust for the use and benefit of the religious society making the conveyance or transfer; and shall not, therefore, be liable for any debt, obligation or liability of the society.

Power of Supreme Court to Order Sale.

After one year from the time of the transfer or conveyance, the Supreme Court may, upon the application of the society made at any special term of said Court, order a sale by said trustees of such property, and direct the application of the proceeds of such sale as shall be most for the interest of such society.

Application—How Made.

Such application shall be made upon the proof to the Court that the same has been authorized and

directed by a vote of a majority of the vestry of such society for whose benefit said property is held in trust, duly entered upon the minutes at a regular meeting thereof, and that such vote and authorization of said vestry has been approved and confirmed by a vote of not less than two-thirds of all such persons belonging to said society who shall attend the meeting as hereinafter provided who are lawful voters not only, but who shall have paid not less than ten dollars during the preceding twelve months to the support of such society. The meeting shall be called and conducted, and a record of its proceedings kept, and a certificate thereof made and recorded in the same manner as was required for the transfer and conveyance of such property to said trustees.

(For form of petition and order, see Nos. 18 and 19.)

Section 9 provides that "the said certificate when recorded as aforesaid, or a certified copy thereof, under the hand and seal of said County Clerk, shall be delivered to one of the members of the Trustees of the Parochial Fund, and it shall thereupon be the duty of the said trustees to convey and transfer the property, real and personal, so held by them in trust, and to apply the proceeds

thereof pursuant to and in compliance with the terms and directions of the order of the Court made in reference thereto."

While the statute does not in terms require it, it seems necessarily to follow that a certified copy of the order of the Court should be served at the same time on the trustees, as that is their only source of information as to the terms and conditions of the sale.

The Board of Missions of the Diocese of Albany.

By chapter XIII. of the Laws of 1880 was incorporated "The Board of Missions of the Protestant Episcopal Church in the Diocese of Albany," with power to take, hold, and convey such estate, real and personal, as may be necessary or convenient for the purposes of said corporation, provided the yearly value or income of the same shall not exceed the sum of twenty-five thousand dollars.

By section 2 of the act, the objects of the association are defined as follows: "The objects of the said corporation shall be educational, charitable and religious, and also the control, care and management of the property and funds now provided, together with such property and funds as may be

hereafter provided, contributed to, or acquired by said corporation by purchase, gift, grant, devise or bequest, in trust or otherwise, and any accumulations thereof, for the organization, establishment and support of missions of said church in the Diocese of Albany. And also to take and hold property in manner aforesaid, both real and personal, which is or may be used or designed or intended to be used for the erection, maintenance, support, and care of Protestant Episcopal churches, parsonages, burial places, orphanages, missions, homes, halls, asylums, or other diocesan institutions or purposes in the said diocese, to the end that the same may be set apart, maintained and devoted in perpetuity or otherwise to the uses, purposes, and objects intended, and to take and hold, in manner aforesaid, any and all such property, both real and personal, as shall or may be conveyed to said corporation, or intended so to be, and to apply the same for any of the objects aforesaid; and to lease, convey, and dispose of the same, in accordance with any trust committed to it. And the said corporation may act as trustee in respect to any gift, grant, devise or bequest pertaining to the objects and purposes herein named, or either of them. And gifts, grants, devises, and bequests, of both real and personal

property, may be made directly to the said corporation, or in trust to the same for any of the uses and purposes aforesaid."

The Board consists of the bishop, who is *ex officio* the president thereof, and of five clergymen and five laymen, usually elected by the Convention of the Diocese, who have power to fill any vacancy in their number, not occurring during a session of such Convention. The Board is also subject to the directions and must conform to the instructions of the Convention, if communicated in writing and entered on the journal of that body.

The Trustees of the Estate Belonging to the Diocese of Long Island.

The Bishop and Standing Committee, by an act passed April 26, 1887, were incorporated under the above title, and by a law enacted May 17, 1872, were empowered "to take by grant, conveyance, devise or bequest, any estate, real or personal, upon trust for any church, society, or congregation belonging to the Protestant Episcopal Church in said Diocese, and hold, manage, transfer and convey the same for the uses and purposes of said church, society, or congregation; provided, however, that so

long as the title to any such property shall be vested in such corporation, the same shall be held and used only in conforming with the canons, rules, regulations, and usages of the Protestant Episcopal Church in said Diocese."

CHAPTER IX.

OF TAXATION.

“ EVERY building for public worship, every school-house and the several lots on which the same are situated, shall be exempt from taxation.”

2 Rev. S. Banks & Bros., 7 Ed., 982.

The term taxation as used above applies only to the general city and county taxes ; assessments for local improvements, whereby the church property is benefited and enhanced in value, may be made, and will become a lien upon it in the same manner and to the same extent as upon individual property.

A building used on Sundays for religious worship, and on week days when required, but on other days for public amusement and pecuniary profit, is not exempt from taxation.

In re Camp-meeting Ass'n, 2 New England Rep., 915.

If the legal title to the property used by the corporation for public worship is in another, although employed for religious purposes only, it is liable to be taxed.

People v. Anderson, 4 West Rep., 142.

The reason of the rule which subjects religious societies to taxation for local improvements is stated by Judge Breeze in *McLean Co. agt. Bloomington*, 106 *Ill. Rep.*, 209, as follows: "All the cases decided by this Court, so far as we have examined, hold that these special assessments are not taxes, for the reason, as plainly appears from the opinions delivered, that when laid in the ratio of benefit they are not burdens.

"It is this element which has reconciled the Court to their imposition, and induced the Court to range the power to make them under the power of eminent domain, the just compensation being the benefits flowing to the property from the improvements, and which are required to be estimated together with the damages. Nor can a case be found decided by this Court on principle variant from this, the equation of benefit and burden forming the groundwork of them all."

Chicago v. Union, 3 *West Rep.*, 97.

People v. Mayor, etc., 2 *Hun*, 433.

Not only the church edifice, but, as incident thereto, a rectory, guild-house, or any other building used exclusively for the purposes of the church, will not be subject to taxation.

The exemption from taxation of the lot on which

the buildings are situated is not affected by the fact that a highway divides the lot wholly used for the same purposes into two portions, on one of which only the buildings are located.

People v. The Comm., etc., 10 Hun, 246.

In that case 103 acres used by the Academy of the Sacred Heart, although divided by a highway, and the buildings were all on one portion of it, was held to be exempt.

The size of the lot used in connection with the church is immaterial. The only question is, is it used exclusively for church purposes?

The exemption is absolute, and no discretion is given to the assessors to pass upon it.

Temple Grove Seminary v. Cramer, 10 Abb. N. C., 424.

Lands set apart for the erection of a church are not exempt until the building is actually commenced. "The law," says Judge Roosevelt, "to warrant this claim of privilege, requires an actual building—a house made with hands—not eternal in the heavens, but temporal, situated on temporal lots, resting not on intention, however pious or praiseworthy, but on solid, sublunary earth."

Trinity Church v. Mayor, 10 How. Pr., 138.

The personal property of every minister of the

gospel is exempt from taxation; also his real estate, provided that such real and personal estate does not exceed \$1,500.

2 Rev. St., 982.

The entire amount of the exemption for both realty and personalty is limited to that amount, and any property of whatever kind owned by a clergyman in addition to \$1,500 is subject to taxation.

A priest, or minister of the gospel, to sustain an action against the assessors for assessing him, must not only show that he was such, but that the property assessed was within the exemption, *i.e.*, that the value of both his real and personal property did not exceed \$1,500. He is liable to be taxed for the excess.

Prosser v. Secor, 5 Barb., 607.

Regularly ordained clergymen are exempt from taxation irrespective of the question whether they are actually engaged in their calling.

Opin. Att'ys Gen., 1845, p. 147.

But a minister or priest who has wholly abandoned the duties of his vocation, and engaged in secular pursuits, is liable to taxation, although he holds a license to preach.

Barhyte v. Shepherd, 35 N. Y. R., 238.

But if there is any question on the subject, the assessors act judicially, and their decision will not be reviewed.

Id.

It is well settled that supernumerary or superannuated clergymen, not engaged in worldly business, who, from age or poor health, are unable to do effective service, are entitled to the exemption.

Licentiates, or those not regularly ordained, are not exempt.

Opin. Att'ys Gen., 148.

Parishes in the State of New York are subject to the collateral inheritance tax prescribed by chap. 713, Laws of 1887, which requires the payment to the County Treasurer of 5 per cent. on all moneys bequeathed or property given by will to the corporation.

Catlin v. Trinity College, 113 N. Y. R., 133.

CHAPTER X.

OF PUBLIC WORSHIP.

THE Constitution of the State of New York provides that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind.

Article 1, § 3.

The principle is eloquently asserted in the Constitution of the State of Massachusetts, which declares that "it is the right as well as duty of men in society publicly and at stated seasons to worship the Supreme Being, the great Creator of the Universe. And no subject shall be hurt, molested or restrained in his person, liberty or estate for worshiping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship."

Bill of Rights, Art. 2.

This provision is enforced by the Penal Code of

New York, which prescribes (§ 272) that an attempt by means of threats or violence to compel any person to adopt, practice, or profess a particular form of religious belief is a misdemeanor.

Section 273 provides that a person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

Section 274 declares that whoever willfully disturbs, interrupts, or disquiets any assemblage of people met for religious worship, by any of the acts enumerated in the next section, is guilty of a misdemeanor.

The offense is defined by § 275, as follows :

“ 1st. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting.

“ 2d. Engaging in or promoting within two miles of the place where a religious meeting is held, any racing of animals, or gaming of any description.

“ 3d. Obstructing, in any manner, without authority of law, within the like distance, free passage along a highway to the place of such meeting.”

Where a question of doubt exists as to the legal rights of rival claimants to the trusteeship of the property of a religious corporation, the claimants who have been in recognized possession will be sustained by injunction to prevent disorderly interference by their opponents until the legal right may be settled by an action, brought by the attorney-general in the name of the people.

Reis v. Rohde, 34 *Hun*, 161.

A person who disturbs public worship may be removed by the use of force sufficient for that purpose. No action will lie against the party ejecting him unless he has been guilty of using unnecessary violence.

Hall v. Lee, 34 *N. Y. R.*, 141.

The officers of the church may remove him (*Beckett v. Lawrence*, 17 *Abb.*, *N. S.*, 403), or the priest, and it is not necessary that the disturbance be willful in order to justify the ejection. If the person is guilty of disturbing the meeting and interrupting its order and decorum, then the application of such force as may be necessary to remove him may be justified.

Says Davis, J., in *Hall v. Lee*, *supra*: "I think there was also error in that part of the charge which

instructed the jury that the minister or priest had no greater right to use force than any other member of the congregation. In one sense, perhaps, this may be correct, namely, that any other member has equal right with the minister or priest to use force in removing a disturber of the peace and order of the meeting. But usage and custom have made it peculiarly the duty of the minister or priest to conduct the services of religious meetings; to preside over them, to preserve order therein, and act as the organ or spokesman of the congregation. * * *

It is most appropriate that the minister or priest should preserve order and rebuke all violations of it. As the acknowledged presiding officer of the meeting, it is his duty to check all attempts to interrupt its order, quietness, and solemnity, and for this purpose he unquestionably has full power and authority to call upon others to aid him, or direct them to remove the offender. In this sense, therefore, he has a greater right to enforce order than any other member of the congregation."

And the intruder or disturber may be removed although religious services are not in actual progress.

The vestry in a free church may determine what pews or sittings shall be occupied by members of the congregation, and have the right to enforce the

same. They may request any person to vacate a particular seat, and have a legal right, however indecorous its exercise might be, to use sufficient force for that purpose.

Sheldon v. Vail, 28 *Hun*, 354.

A regulation prohibiting a person from leaving a church during divine service is unlawful, and may be disregarded.

People v. Brown, 1 *Wh. Cr. Cas.*, 124.

CHAPTER XI.

OF MARRIAGE, AND THE RECTOR'S DUTY IN CONNECTION THEREWITH.

BY the law of the Church, Canon 13 of Title 2, § 2, it is provided that "no minister knowingly, after due inquiry, shall solemnize the marriage of any person who has a divorced husband or wife still living, if such husband or wife has been put away for any cause arising after marriage; but this Canon shall not be held to apply to the innocent party in a divorce for the cause of adultery, or to parties once divorced seeking to be united again."

But the civil law, while it commits to every ordained clergyman the right to perform the ceremony of marriage, also imposes upon him certain duties, and requires—

1st. That the ceremony shall be according to the forms and customs of the church or society to which he belongs.

3 *R. S. Banks & Bro., 7 Ed., 2332.*

2d. It shall be his duty to ascertain, 1st. The Christian and surnames of the parties, their respec-

tive places of residence, and that they are of sufficient age to be capable in law of contracting marriage. 2d. The names and places of residence of two of the attesting witnesses if more than one be present, and if not, the name and place of residence of such witness.

He shall enter the facts so ascertained, and the day on which such marriage is solemnized, in a book to be kept by him for that purpose.

3 *R. S.*, 2333.

It need not be said that the clergyman owes no higher duty to the Church or the community than to be careful how he unites in an irrevocable bond parties who apply to him for that purpose unaccompanied by their parents or guardians.

It is his duty, unless their circumstances and position, character, and fitness to marry are well known to him, to make the most careful inquiries on the subject.

By the Laws of 1873, ch. 25, it is enacted that "if either of the parties is not personally known to him, he shall ascertain from the respective parties their right to contract marriage, and for that purpose he may examine the parties, or either of them, or any other person under oath, which he is hereby author-

ized to administer, which examination shall be reduced to writing and subscribed by the parties ; and either of the respective parties making a false statement under this oath shall be deemed guilty of willful and corrupt perjury, and shall be liable therefor."

(For form of deposition, see No. 14.)

§ 12. " Every minister or magistrate who shall solemnize a marriage where either of the parties within his knowledge shall be under the age of legal consent, or an idiot or lunatic ; or to which within his knowledge any legal impediment exists, shall be deemed guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried."

§ 13. Whenever a marriage shall have been solemnized within this State pursuant to this title, the minister or magistrate by whom the marriage was solemnized shall furnish, on request, to either party a certificate specifying—

1st. The names and places of residence of the parties married, and that they were known to such minister or magistrate, or were satisfactorily proved by the oath of the parties themselves, or of a person known to him, that they were the persons described

in said certificate, and that they were of sufficient age to contract marriage.

2d. The name and place of residence of the attesting witness or witnesses.

3d. The time and place of contracting such marriage.

The certificate shall also state that after due inquiry made there appears no lawful impediment to such marriage, and it shall be signed by the person making it.

(For form of certificate, see 13.)

An original certificate of a marriage within the State made by the minister or magistrate by whom it was solemnized; the original entry thereof made pursuant to law in the office of the Clerk of a city or town within the State, or a copy of the certificate, or of the entry duly certified, is presumptive evidence of the marriage.

Code Civ. Pro., § 928.

There is no statute fixing the age at which parties may lawfully marry in this State. The common law rule is thus stated by Chancellor Kent, in 2 *Comm.*, 78: "No persons are capable of binding themselves in marriage until they have arrived at the age of consent, which by the common law of the land is fixed

at fourteen in males and twelve in females. The law supposes that the parties at that age have sufficient discretion for such a contract, and they can then bind themselves irrevocably, and cannot afterward be permitted to plead even their egregious indiscretion, however distressing the result of it may be.

It has been questioned, however, if this rule has not been changed by the Penal Code, which provides (§ 282) that a person who takes a female under the age of *sixteen* years, without the consent of her mother, father, guardian, or other person having legal charge of her person, for the purpose of marriage, is guilty of abduction, and punishable by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or both.

It is certain that the clergyman should decline to marry a woman under that age unless accompanied by her parents or guardian, as otherwise he may become involved in serious complications.

Moot v. Moot, 37 *Hun*, 238.

But as to the fitness of the groom for marriage, if over the age of fourteen years, he must exercise a sound discretion, as there is no law forbidding such marriage.

It would seem to be beyond question that as the solemnizing of marriage is an act of public worship, evidenced by the reading of God's word and prayer, and in large portions of Christendom considered a sacrament, it may, like any other act of devotion, be celebrated on the Lord's day.

It would be hardly necessary to give utterance to such an opinion, had not certain newspapers in Pennsylvania confidently asserted that marriages on Sunday are wholly invalid.

SUPPLEMENT CONTAINING FORMS.

(FORM NO. 1.)

NOTICE OF MEETING TO INCORPORATE SOCIETY.

Notice is hereby given that a meeting of the male persons of full age belonging to this church will be held on the — day of —, 18—, at — o'clock, in the —noon, in this place, for the purpose of incorporating themselves under the acts of the Legislature in such case made and provided; and to determine the name and title by which such church shall be known in law; on what day in Easter week an annual election for church wardens and vestrymen shall thereafter take place; what number of vestrymen, not less than four or more than eight, shall annually be elected to constitute, together with the rector, if there be one, and the two church wardens, the vestry of the church; and by a majority of votes to elect two church wardens and the number of vestrymen determined to be annually elected to serve until the next annual election.

(FORM NO. 2.)

CERTIFICATE OF INCORPORATION.

To all to whom these presents may come, greeting: Know ye that we whose names are hereto subscribed do hereby certify: That on the — day of —, 18—, in pursuance of no-

tice for that purpose duly given, male persons of full age exceeding six in number belonging to the church or congregation, worshipping in —, in the city of —, county of —, and State of New York, and in communion with the Protestant Episcopal Church, not before incorporated, met at their said place of public worship for the purpose of incorporating themselves under the laws of the Legislature of the State of New York in such case provided, and doing the other acts therein directed to be done.

That the subscriber, the Rev. —, rector of such church (or —, a church warden, or a vestryman of such church, there being no rector), was called to the chair, and presided and received the votes.

That at such meeting — and — having received a majority of the legal votes cast for that purpose, were duly elected church wardens, and (*insert, giving full names*) were by a like majority of votes duly elected vestrymen.

That it was determined at such meeting, that the number of vestrymen to be annually elected should be —, and that the name or title by which such church or congregation should be known at law should be The —.

In testimony whereof, I, —, the said presiding officer, at said meeting, and we, — and —, electors, present during the same, have hereunto set our hands and seals the — day of —, 18—.

STATE OF NEW YORK, MONROE CO. [ss.]

On this — day of —, 18—, before me, the subscriber, personally appeared — and — and —, to me known to be the same persons described in and who executed the forego-

ing certificate, and severally acknowledged that they executed the same.

(The original must be recorded in the office of the Clerk of the County wherein the church is located, and a copy should be entered in the book of minutes of the vestry.)

(FORM NO. 3.)

NOTICE OF SUBSEQUENT ELECTION.

Notice is hereby given that an election for church wardens and vestrymen of this church will be held in the Sunday-school room (or other suitable place), on the — day of —, 18—, immediately after morning service, which will be held at — o'clock, A.M., the polls to remain open one hour, or longer if required.

(FORM NO. 4.)

St. — Church, Easter Monday, 188—.

At a meeting of the electors of said church, of which notice was duly given, according to law, held at the place above named, on Easter Monday, 18—, at 9.30 A.M., to elect wardens and vestrymen, I, the rector, Rev. Dr. —, (or —, one of the wardens of said church,) presided at such meeting, and received said vote; that the polls were kept open for one hour; that the following named persons, having received a majority of all the votes cast, were declared duly elected wardens and vestrymen for the ensuing year:

For wardens (*insert full names*).

For vestrymen (*insert full names*).

In witness whereof, I, —, the presiding officer, and —, and —, electors present at said election, have hereunto set our hands the — day and year first above written.

(The form for filling a vacancy is, with obvious changes, the same.)

(FORM NO. 5.)

PETITION FOR CHANGE OF NAME.

As the County Court is always open, it may be more convenient to apply to that tribunal.

MONROE COUNTY COURT :

<p>In the matter of the petition of the Rector, Church Wardens, and Vestrymen of St. Mark's Church, for permission to change the name of said corporation.</p>
--

To the Judge of said Court :

The petition of the Rector, Church Wardens and Vestrymen aforesaid respectfully shows that your petitioners are a corporation duly incorporated under and by virtue of the laws of the State, in communion with the Protestant Episcopal Church in the United States of America, and as such corporation located in the city of —.

That there is another religious body connected with the German Lutheran Church bearing the same name, which has also a place of worship in said city ; that by reason of such similarity of names, the title of your petitioner has become in-

convenient by reason of said churches being mistaken one for another.

That at a meeting of the duly qualified electors of said St. Mark's Episcopal Church, duly called for that purpose, and held at —, on the — day of —, 18—, a resolution reciting the expediency of changing the name aforesaid to the Rector, Wardens, and Vestrymen of St. Matthew's Church, in the city of —, was unanimously adopted, and the Rev. —, rector of said church, was authorised and directed to present a petition for that purpose to this honorable Court.

Your petitioners therefore pray that they may, by an order of the Court, be permitted to assume the corporate name of the Rector, Church Wardens, and Vestrymen of St. Matthew's Church in the city of —.

Dated, —.

STATE OF NEW YORK, — COUNTY, ss.:

—, being duly sworn, says that he is the Rector of St. Mark's Episcopal Church in the City of —, in said county; that he has read the foregoing petition, and that the same is in all respects true.

Sworn to before me this — day of —, 18—.

(FORM NO. 6.)

At a term of the — County Court, held at the Court House in the city of —, in said county, on the — day of —, 18—. Present, Hon. —, Judge of said Court.

In the matter of — (etc., as in petition).

Upon reading and filing the petition of —, Rector of said

Church, whereby it appears that the same is a corporation duly incorporated under and by virtue of the laws of this State, that the said corporate name has become and is inconvenient (or other reason):

Now therefore, on motion of —, Attorney for said corporation, it is hereby ordered that upon compliance with the provisions of the Revised Statutes, and of Chapter 323 of the Laws of 1853, and of Chapter 464 of the Laws of 1847, the said corporation be authorized to assume the name of the Rector, Church Wardens and Vestrymen of St. Matthew's Church in the City of —, and from and after the — day of — next, be known by such new and assumed name, and no other.

And it is further ordered that this order be printed once in the —, a newspaper published in said city.

(The order must be published, within ten days after it is granted, in a public newspaper of the county in which the church is located (one insertion will be enough), and within twenty days thereafter the petition, affidavit, order, and proof of its publication filed and recorded in the office of the Clerk of the County wherein the Church is located.)

(FORM NO. 7.)

PETITION FOR SALE OF LANDS.

MONROE COUNTY COURT :

In the matter of the petition of the Rector, Church Wardens and Vestrymen of St. — Church, Rochester, for leave to sell real estate.

The petition of —, of Rochester aforesaid, respectfully shows that your petitioner is Clerk of the Vestry of said Church ; that on or about the — day of —, 18—, said Rector, Church Wardens and Vestrymen were duly incorporated as a religious corporation under the name aforesaid ; that on or about the — day of —, 18—, they became seized in fee of premises consisting of one lot of land in said city of Rochester, bounded and described as follows, to wit :

All that tract or parcel of land situate

(Particularly describe the premises.)

That they caused to be built a rectory on said premises, which has ever since been used for the residence of the rector of said church, and which is of the value of about \$10,000.

That, owing to circumstances beyond their control, they have become indebted to various individuals in the sum of about \$9,000 ; that some of the said creditors threaten to put their claims in judgment ; that said corporation has no other property except their church edifice, which is of the value of about \$20,000, and no means of satisfying said indebtedness except by a sale of the premises hereinbefore particularly described.

That at a meeting of the vestry of said church, duly called, and held on the — day of —, 18—, and at which were present the rector, two church wardens and six vestrymen, the following resolution was adopted by a unanimous vote (or by the vote of a majority of those present at said meeting), to wit :

Whereas, this church has incurred an indebtedness of about \$9,000, and we have no means of paying the same except by a sale of the rectory of said church and the lot on which the same is situate : Now, therefore, it is resolved that it is expe-

dient to sell said rectory lot for the purpose aforesaid, and that —, Esq., the clerk of this vestry, be, and he hereby is, authorized to apply to the Monroe County Court for an order directing the sale of said rectory property.

Your petitioners, therefore, pray that, by an order of this court, authority may be given to said corporation to sell said property, so described as aforesaid, and that said rector, wardens and vestrymen be authorized to make conveyance thereof for the purposes aforesaid.

—, Petitioner.

Form of verification as in No. 5 above, substituting word clerk for rector.

(FORM NO. 8.)

ORDER OF SALE.

At a term of the — County Court, held at the Court House in the city of —, in said county, on the — day of —, 18—.

Present, Hon. —, Judge of said Court.

In the matter of —, {
(as in petition). }

Upon reading and filing petition of —, clerk of the vestry of St. — Church, whereby it is shown to be expedient and necessary for the said corporation to sell and dispose of its rectory property, which is bounded and described as follows :

(Here describe it.)

and the said clerk was duly authorized by said vestry to make said application.

Now, therefore, on motion of —, attorney for said petitioner,

it is ordered that said Rector, Church Wardens and Vestrymen, be, and they are hereby authorized and directed to sell the premises aforesaid, for the best price which can be obtained therefor, and to make and execute any and all necessary and proper deed or deeds for that purpose.

(FORM NO. 9.)

AGREEMENT FOR CONSOLIDATION.

Agreement made this — day of —, 18—, by and between the Rector, Church Wardens and Vestrymen of St. George's Church, in the City of New York, of the first part, and the Rector, Church Wardens, and Vestrymen of the Church of the Intercessor, of the second part, witnesseth :

That said parties covenant and agree to and with each other, that said religious corporations shall unite and consolidate, upon the following terms and conditions, to wit :

1st. The name of the new church or corporation so to be formed by the consolidation of the parties as aforesaid, shall be known and distinguished as the Rector, Church Wardens and Vestrymen of the Church of the Messiah, and shall belong to the Protestant Episcopal Church.

2d. The following named persons shall act as church wardens and vestrymen of said Church of the Messiah until the first annual election of the proposed new corporation, which shall take place immediately after Morning Prayer, on Easter Monday in each year.

3d. The place of worship of said united congregations shall be the church edifice, heretofore used by the said party of the — part.

Witness the hands of the rector and clerk of said respective parties, thereunto duly authorized, and the official seal of each of said corporations, the day and year first above written.

[L.S.]

[L.S.]

[L.S.]

[L.S.]

STATE OF NEW YORK, } ss.
 ——— COUNTY,

On this — day of —, 18—, before me, the subscriber, personally appeared —, to me known, who being by me duly sworn, did depose and say that he resides in — in said county; that he is the clerk of the vestry of said St. George's Church, of the city of —; that by a resolution of said vestry duly adopted by a majority (or unanimous) vote of those present at a meeting duly called for that purpose, he and said — rector, were on the — day of —, 18—, duly authorized and instructed to execute the foregoing instrument on behalf of said vestry; that he and said — rector did, by virtue of said resolution, sign the same on the day of the date thereof; that he knows the corporate seal of said vestry, and that he at the same time by the like authority affixed the same to the instrument aforesaid. —, Notary Public.

Same form of proof as to the execution by the other party.

A duplicate of the agreement must then be presented to the Bishop and Standing Committee of the Diocese for their approval, and may be approved by them in the following form : (No. 10.)

We —, the Bishop of the Diocese of Western New York, and —, constituting a majority of the Standing Committee of

said diocese, hereby express our approval of the within agreement, and consent to the union and consolidation therein named.

Dated —, —

(FORM NO. 10.)

PETITION FOR CONSOLIDATION.

SUPREME COURT.

In the matter

of

The Petition of the Rector, Church Wardens
and Vestrymen of St. George's Church,
to unite and consolidate with the Rector,
Church Wardens and Vestrymen of the
Church of the Intercessor.

The petition of the rector, church wardens and vestrymen of St. George's Church, in the city of —, respectfully shows :

That your petitioners are a religious corporation duly incorporated under and by virtue of the laws of the State of New York :

That on the — day of —, 18—, your petitioners made and executed a petition, in writing, with the rector, church wardens and vestrymen of the Church of the Intercessor, of the same city, of which the following is a copy :

(Here insert agreement.)

That said agreement has received the sanction and approval of the Bishop and Standing Committee of the diocese of —.

That the reason of making said agreement was that within the territorial limits of the parishes in which said corporations are located there are not a sufficient number of Episcopalians to sustain both of said corporations, and that in consequence the income of your petitioners derived from revenues of said St. George's Church, for some time past, has not been equal to their expenditures in conducting the worship of the same.

That Schedule "A," hereto annexed, contains a true statement of the real and personal property of said corporation.

That Schedule "B," hereto annexed, contains a particular statement of the indebtedness and liabilities of said corporation.

That said corporation has no income except such as is derived from the rental of its pews and its weekly offertory, which amounted during the year just closed, to about the sum of \$——.

Wherefore, your petitioners pray for the order of this Court authorizing and directing them to form a union and consolidation with the rector, church wardens and vestrymen of said Church of the Intercessor, upon the terms and conditions specified in the agreement before said.

(Signed by the rector, church wardens and vestrymen, and verified by the rector as in No. 5 above.)

(FORM NO. 11.)

ORDER OF CONSOLIDATION.

At a term of the Supreme Court, held at the Court House in —, in and for the county of —, on the — day of —, 18—.

Present, The Honorable ———, Justice.

In the matter

of

The Petitions of the Rector, etc., of St.
George's Church, and of the Rector, etc.,
of the Church of the Intercessor, asking
to be united and consolidated.

Upon reading and filing the petition of the rector, church wardens and vestrymen of St. George's Church, in the city of ———, and also the petition of the rector, church wardens and vestrymen of the Church of the Intercessor, in said city, each asking, for reasons set forth in said petitions, that said corporations be united and consolidated, and also setting forth that an agreement between said corporations has been duly executed by and between each of them to and with the other for that purpose, of which said agreement the following is a copy :

(Here insert copy of agreement.)

Each of which petitions also sets forth that such an agreement has received the approval of the Bishop and Standing Committee of the diocese in which said corporations are located, and also contains a statement of the indebtedness of the corporation and all its property, and the amount and sources of its annual income.

Now, therefore, on motion of ———, attorney for said petitioners, it is hereby ordered that said religious corporations be and the same hereby are united and consolidated into one

corporation, to be known and distinguished as St. — Church, in the city of —, with the rights and powers, duties and obligations provided by law and upon the terms and conditions mentioned in the agreement aforesaid.

The statute provides that upon entering this order with the clerk of the court granting it, in the county where such corporations are located, all the estates, rights, and property of whatsoever nature, belonging to either of said corporations, shall, without further act or deed, be vested in and transferred to the new corporation as effectually as they were vested in or belonged to the former corporations, and the said new corporation shall be liable for all the debts and liabilities of the former corporation in the same manner and as effectually as if said debts or liabilities had been contracted or incurred by it.

(FORM NO. 12.)

CERTIFICATE OF CHANGE IN NUMBER OF VESTRYMEN.

To all to whom these presents shall come : We whose names are hereto subscribed, do certify that on the — day of —, 18—, at a regular meeting of the rector, church wardens and vestrymen of — Church, Rochester, in the State of New York, held at the rectory of said church, at which were present the rector, church wardens, and vestrymen, the following resolution was unanimously adopted, to wit :

Resolved, That it is expedient that the number of persons to officiate as vestrymen of — Church in the City of —, be changed to — ; that notice was given by the rector of such church in the time of divine service on two Sundays next pre-

vious to Easter Monday, —, 18—, that an election of wardens and vestrymen of said church would be held on the day last aforesaid, immediately after Morning Prayer at the chapel of said church, at 9.30 A.M. on that day, and that said resolution would be then and there submitted to the electors qualified to vote at said election for their approval or rejection; that at an election duly held in pursuance of such notice, a vote was taken for that purpose, and said resolution was unanimously adopted.

In witness whereof we, —, rector of said church, and —, two electors present at said meeting, have hereunto set our hands and seals this — day of —, 18—.

[L.S.]

[L.S.]

[L.S.]

(Form of acknowledgment as in No. 2.)

(FORM NO. 13)

CERTIFICATE OF MARRIAGE.

I, —, a duly ordained clergyman of the Protestant Episcopal Church residing in the city of New York, and rector of St. James' Church, therein, do hereby certify that on the — day of —, 18—, at the rectory of said church (or at No. — Street, in said city, or in said Church), I united in marriage John James Doe and Mary Jane Roe, both of whom are residents of said city, and who were known to me (or satisfactorily proven to me) to be the identical persons herein above named, and of sufficient age to contract marriage; that the attesting witnesses present at such marriage were — and —, who reside in said city of New York; that after due inquiry made

for the purpose, there appeared to be no legal impediment to such marriage.

Witness my hand at —, this — day of —, 18—.

(FORM NO. 14.)

DEPOSITION OF APPLICANT FOR MARRIAGE.

STATE OF NEW YORK, }
 MONROE COUNTY, } ss.

The deposition of —, who, being by me duly sworn, doth depose and say as follows: I have applied to Rev. — —, to be by him united in marriage to — —, who resides in the — of —, in said county. My age is — years; I reside at No. — —, in the — of —, in the State of —. I have never been married (or I was once married to — —, but was lawfully divorced from him on or about the — day of —, 18—, on the ground of his adultery). I know of no legal impediment to my marriage.

(Signed by applicant.)

The foregoing deposition was by me carefully read over to said witness, and by him subscribed in my presence this — day of —, 18—.

—, Rector, etc.

(FORM NO. 15.)

NOTICE OF MEETING TO CONVEY PROPERTY TO TRUSTEES
 OF THE PAROCHIAL FUND.

Notice is hereby given that at a meeting of the vestry of this church held at the rectory on the — inst., the following resolution was unanimously adopted:

“*Resolved*, That it is expedient to convey our church edifice and rectory, and the lands on which the same are situate, to the Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York.”

A meeting of members of this society entitled to vote for church wardens and vestrymen thereof will be held in this church on the — day of — next, to take action on such resolution, and to determine whether the same shall or shall not be ratified and confirmed.

(FORM NO. 16.)

CERTIFICATE OF THE ACTION OF THE ELECTORS AT THE
MEETING CALLED BY SUCH NOTICE.

We, —, rector of — Church, who presided at the meeting hereinafter named, and — and — and —, three electors present at said meeting requested by said rector to unite in this certificate, do hereby certify that a meeting of the duly qualified electors of said society was this day held in the church building in pursuance of notice given and posted, as required by law, to take action upon a resolution of the vestry of said church, passed at a meeting thereof duly called, held on the — day of —, 18—, of which notice the following is a copy :

(Insert notice as in preceding form.)

That said Rev. — presided at said meeting, and said — and — and —, who are electors of said church, were present at the same.

That fifty ballots were cast at such meeting, of which forty

were cast "for the resolution of the vestry," and ten were cast "against the resolution of the vestry."

In witness we, said presiding officer and said electors, have herewith set our hands and seals this — day of —, 18—.

(Form of acknowledgment as in No. 2 above.)

(FORM NO. 17.)

OF DEED TO TRUSTEES.

This indenture, made this — day of —, 18—, by and between the Rector, Wardens and Vestrymen of — Church, in the city of Rochester, county of Monroe, and State of New York, of the first part, and the Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York, of the second part, witnesseth that, whereas, on the — day of —, 18—, a certificate was made by Rev. —, rector of said church and — and —, and —, electors thereof showing that,

(Here set forth the recitals of the certificate.)

Now, therefore, in consideration of the premises, and of the sum of one dollar to said party of the first part duly paid, said party of the first part hath sold, granted and conveyed, and doth hereby sell, grant and convey to said party of the second part all that tract or parcel of land situate,

(Here describe it.)

with the appurtenances, to have and to hold the same for the use and benefit of said party of the first part. In witness whereof said parties of the first part have hereunto set their

hands and affixed their corporate seal the day and year first above written.

(Signed by Rector and Clerk.)

(Form of acknowledgment or proof as in No. 9 above.)

(FORM NO. 18.)

THE PETITION FOR CONVEYANCE OF REAL ESTATE BY
TRUSTEES OF PAROCHIAL FUND.

SUPREME COURT.

In the matter of the petition

of

The Rector, Wardens and Vestrymen of
— Church, in the City of —, that the
trustees therein named convey the lands
held by them in trust for said petitioners.

To the Justices of said Court :

Your petitioners respectfully show that they are a religious corporation duly incorporated under and by virtue of the laws of the State of New York ; that on the — day of —, by their indenture duly made for that purpose, in pursuance of chapter 124 of the Laws of 1884, they conveyed, with other property, to the Trustees of the Parochial Fund in the Diocese of Western New York their rectory property, consisting of one small house and lot, which is bounded and described as follows :

(Here describe such property.)

That by reason of the insufficiency of said house and lot for the accommodation of the rector of said church, and by reason that your petitioners have the means, together with what can be raised from the sale of said present rectory, to build a new, larger, and more commodious residence for said rector, it was, at a meeting of your petitioners, duly called for that purpose, determined by unanimous resolution that it is expedient and desirable to sell said rectory lot for the purpose aforesaid, and that a meeting of members of the congregation duly authorized to vote therefor be called to consider the propriety of adopting said resolution.

That in pursuance of such action as aforesaid notice was given and posted as required by law that such meeting would be held at the place of worship of said church on the — day of —, 18—, at which time such meeting was held, and the question embodied in such resolution was submitted to the voters there present, and twenty-five lawful votes were cast in favor of and ratifying such resolution, and none against it ; a certificate of which said action, duly acknowledged, has been recorded in the office of the Clerk of the County of —, a copy of which is hereto annexed and made part of this petition.

Your petitioners therefore pray for an order of this Honorable Court authorizing and directing the Trustees of said Parochial Fund to sell and convey the property herein above particularly described, and the proceeds pay to your petitioners for the purpose of building a new rectory aforesaid.

(Verification as in No. 5 above.)

(FORM NO. 19.)

ORDER FOR SALE IN PURSUANCE OF THE FOREGOING
PETITION.

At a term of the Supreme Court held in the Court House of the City of —, in and for the County of —, on the — day of —, 18—.

Present, Hon. — —, Justice.

(*Title.*)

Upon reading and filing the petition of the rector, wardens and vestrymen aforesaid showing that they are a religious corporation; that on the — day of —, 18—, they conveyed by their deed dated on that day, to the Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York, the premises herein described as follows:

(*Here describe them.*)

That said deed was duly recorded in the office of the Clerk of — in Liber — of Deeds at p. —, and it appears to the Court that there are good reasons for granting the prayer of said petition, and that said petitioners have complied in all respects with the provisions of § 8, chapter 124 of the Laws of 1884. In and by which said petition, said petitioners pray that the trustees aforesaid may be required to sell said premises and pay the proceeds thereof to said petitioners for the purposes therein mentioned.

Now, therefore, on motion of —, attorney for said petitioners, it is ordered that said Trustees of the Parochial Fund aforesaid sell and convey said property for the best price which can be obtained for the same, and the proceeds pay to said petitioners for the uses and purposes mentioned and set forth in said petition.

APPENDIX

TO

THE THIRD EDITION

OF THE

LAW OF THE PROTESTANT EPISCOPAL CHURCH

CONTAINING

THE LAW OF OTHER PROMINENT
ECCLESIASTICAL BODIES

WITH FORMS

BY

GEORGE H. HUMPHREY

COUNSELOR AT LAW, OF ROCHESTER, N. Y.

PREFACE TO APPENDIX.

MY treatise on the law of the Protestant Episcopal Church received so kind a reception from the members of that body, and I have been honored by so many urgent requests from those prominent in other religious societies to add to it the law relating to their own organizations, that I have, with much hesitation, prepared the following. My only excuse for it is that the ground seems to be wholly unoccupied, and that I have spared myself no amount of toil in preparing it. It has been my effort to present the rules of law applicable to each denomination in so simple a form that any clergyman or layman may conduct all the business of the Church without the expensive aid of the legal fraternity.

I have added forms for all ordinary proceedings which seem to me complete and able to endure judicial scrutiny. The only work on the subject now extant, so far as I am aware, is that of Hoffman,

published many years ago, erudite and able, but largely a compilation of statutes and intelligible to lawyers only. Since its publication the law has been largely altered by more recent statutes, so that it would not now be a reliable guide even for the legal profession. I think no manual has ever before been offered to the public, which, like this, presents only a clear, simple, and very lucid view of the law of each of the large religious bodies, in such guise as to be, to lawyers and laymen alike, a guide and light on the path of ecclesiastical jurisprudence.

GEORGE H. HUMPHREY.

ROCHESTER, N. Y., *May*, 1890.

THE PRESBYTERIAN CHURCH.

HISTORY.

PRIOR to the American Revolution the Presbyterian Church had but an uncertain footing in the State of New York. The Dutch Church tolerated no form of worship not in harmony with that set forth by the Synod of Dort. Its forms and ceremonies were not so inconsistent with the views of devout Presbyterians as to exclude them from participation in its worship. When New York became a colony of Great Britain, it was provided that the Dutch were to enjoy the liberty of conscience in divine worship and church discipline. In each of the years 1719, 1721, and 1759, applications were made to the Governors, on behalf of Presbyterians of New York City, asking for acts of incorporation. But, after many references to different bodies, the Lords of Trade, and others, involving vexatious

delays and disappointments, the applications were in each case denied, upon the ground that they were inconsistent with the principles of English law and the exclusive claims of the Church of England to the allegiance of British colonists. The Lords of Trade, in answer to such an application, declared in July, 1767, that it was not expedient, upon principles of general policy, to comply with the prayer of the petition, or to give the Presbyterian Church of New York any other privileges or immunities than it is entitled to by the laws of toleration. Lord Dartmouth, in 1775, writing about it to Governor Tryon, said: "The only difficulty or doubt which has occurred is, whether such charter would not have an effect to create an establishment inconsistent with the principles of the laws of England." The point was also made—a point, as was said, "of great weight and importance," namely, whether "His Majesty, with the obligation he is under by his coronation oath, founded on the act of the 5th of Queen Anne, Cap. 5, entitled 'An Act for securing the Church of England as by law established,' could create such establishment in favor of the Presbyterian Church."

But the authority of the Church of England

was terminated by the Revolution, and the principle firmly established which is now ingrafted in the Constitution of the State of New York, that “the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind.” From that time onward the growth and progress of the Presbyterian Church has been like that of the stars, unhasting yet unresting, but increasing yearly in strength, and steady and healthy progression in beneficence, usefulness, and numbers.

The first church of this denomination was incorporated in the City of New York about the first day of June, 1784. Its corporate name was the First Presbyterian Church of the City of New York.

How Incorporated.

Any church desiring corporate rights and privileges may become a body corporate by electing trustees, not less than three nor more than nine, as follows:

Notice.

The minister, if there be one, or in case of his death or absence one of the elders, or for want of such officers any member or stated hearer in the

church, shall, for two successive Sundays next preceding the election, publicly during divine service notify the congregation when and where the election shall be held. The first notice shall be read at least fifteen days prior to the election, and may be as follows :

Form of Notice.

Notice is hereby given that on the — day of —, 1890, an election will be held in this church at ten o'clock A.M., for the purpose of choosing (*not less than three nor more than nine*) persons to act as trustees of the church.

The election must be held in the place where they stately attend for divine worship, whether it be an upper room, a dwelling-house, or a cathedral.

Election: How Conducted.

It need not be by ballot, as the language is that they shall determine "by plurality of votes." This plainly contemplates a *viva voce* vote, although I hardly think it would exclude a ballot, since both are but the expression of a preference, and both equally certain and convenient.

Who May Vote.

The elector must, *first*, belong to the church; *second*, be of full age; *third*, have stately wor-

shipped with such congregation; and, *fourth*, formerly been considered as belonging to the church. Every "*person*" of full age, and having the other qualifications mentioned, may vote at such election. This would certainly include females, more especially as the statute elsewhere speaks of males of full age. This view has been sanctioned by the Court of Appeals in *Lynch v. Pfeiffer*, 110 N.Y., 33.

The rights of voters depend absolutely on the statute, and cannot be changed by any action of the trustees or Church Society. The period during which the voter must have belonged to the church, or been a stated worshiper, is not specified, but it must have been surely long enough to identify him with the church; certainly, and at least, two or three months. The term "full age" means, of course, twenty-one years of age or older. The words, "who has statedly worshiped with the church," mean one who has been a habitual worshiper. An occasional attendance, perhaps once a month, would hardly be sufficient. As before said, the statute implies one who has become so identified with the society as to have such an interest in it that he will be likely to seek by his vote its true welfare.

The trustees must be elected by a plurality of voices. The three or five or seven or nine (what-

ever the number may be), having the most votes, shall be declared elected.

At the hour and place named in the notice, two of the elders, if such there be, and if no such officers, then two of the members of the church nominated by a majority of those present shall preside at such election, receive the vote of the electors, be the judges of the qualifications of such electors, and the officers to return the names of the persons who, by plurality of votes, shall be elected to serve as trustees for such church.

The polls shall be kept open for a reasonable time, the presiding officers shall act as tellers, and, after the votes shall have been counted and announced, shall make a certificate under their hands and seals substantially as follows:

Form of Certificate.

Know all men by these presents,

That we, John Doe and Richard Roe, elders of the First Presbyterian Church of ———, Monroe County and State of New York, or (this day nominated by a majority of members present at said church at an election duly notified to elect seven [*or other number*] persons to act as trustees of said church) who have this day acted as presiding officers at an election duly held to elect (*seven*) trustees for said society, do hereby certify and return :

1st. That notice of such meeting was duly given as required by law.

2d. That we acted as presiding officers at such election.

3d. That the following persons, by a plurality of voices of lawful voters present at such election, were elected to serve as trustees for said church, to wit :

(Here name them.)

That said trustees, and their successors, shall be hereafter called and known as the " Trustees of the First Presbyterian Church of —— " *(or other name).*

In witness whereof we have hereunto set our hands and seals this —— day of ——, 1890.

JOHN DOE. [L.S.]

RICHARD ROE. [L.S.]

(Form of acknowledgment as hereinbefore stated, page 94.)

The certificate, after being signed and sealed by the presiding officers, shall be recorded in the office of the Clerk of the County where the society is located. Thereupon said trustees, by the name expressed in such certificate, shall become a body corporate.

Laws of 1813, ch. 60.

Powers of the Trustees.

I.

TO HAVE A COMMON SEAL.

The trustees shall respectively have and use a common seal, and may renew and alter the same at

their pleasure. I can add nothing on this subject to what I have said *ante*, pp. 19 and 20.

Town of Solon v. Savings Bank, 114 N. Y. R., 114.

II.

To take into their possession and custody all the temporalities belonging to said church or society, whether the same consist of real or personal estate, and whether given directly to said church or to any other person for their use.

They have the entire control of the property of the church, subject, however, to the condition that it shall be used to promote the worship of Almighty God in accordance with the usages of the Presbyterian Church. They can only sell the property by valid deed in accordance with the regulations hereinbefore set forth at page 47, which must be strictly complied with to render the conveyance valid. It seems to be the better opinion that the trustees, for good reasons, may mortgage the church property without a judicial direction to that effect, and I have cited two authorities so holding.

Manning v. Society, etc., 27 Barb., 52.

Baptist Society v. Clapp, 18 Barb., 35.

I am, however, still inclined to think that the word *sell*, in the 11th section of the Act of 1813,

might be construed to include a conditional sale, and that it would be safer to procure the requisite order for that purpose. The custom of the best lawyers in New York City also sanctions this view.

The control of the trustees over the property of the church is well expressed in chapter 79 of the Laws of 1875, section 4, as follows:

“The trustees of any church, congregation, and religious society incorporated under section 3 of the above-mentioned act” (*Laws of 1813, ch. 60*), which includes all religious bodies except the Reformed Dutch and Episcopal Churches, “shall administer the temporalities thereof and hold and apply the estate and property belonging thereto, and the revenues of the same, for the benefit of such corporation according to the discipline, rules, and usages of the denomination to which the church members of the corporation belong; and it shall not be lawful for the trustees to devote such estate, property, or revenues to any other purpose, except toward the support and maintenance of any religious, benevolent, or other institution connected with such church, congregation, or society.”

The definition of their powers is so clear and perfect in above that it needs no further elucidation. But the statute has received judicial inter-

pretation in the matter of the First Presbyterian Society of Buffalo (106 *N. Y.*, 251). Upon the petition of a majority of those who constituted the corporation, the Supreme Court had made an order consenting to the sale of its real estate, and directing the proceeds to be applied to the purpose of providing such other place of worship as the society should decide. On appeal from the order it was contended that the property could not be sold, and a good title to it given, by reason of a trust imposed on it. But Judge Finch, ably answering this position, refutes it as follows: "The deed to the corporation is absolute and without condition or reservation. It created no trust beyond that general duty which the law puts upon a corporation of using its property for the purposes contemplated in its creation. That sort of trust is not one which fastens on the land and inheres in the title, giving with it when it passes a restraining element, but founded solely upon the corporate character of the grantee, and so justifying the control which the statute gives to the courts. The title to the church is an absolute fee, which it can transmit to a vendee with the judicial consent and approval. When that occurs the proceeds take the place of the land and become the corporate property, which the court, by

a suitable direction, devotes to the proper uses and purposes which the corporation was formed to subserve, and to accomplish which its property was bestowed. It is in no respect diverted from the religious corporation, or even from its denominational uses, and so far as there is an element of trust a sale is consistent with and not destructive of it."

It was next contended that the acts of 1875, ch. 79, and 1876, ch. 110, had so changed the existing law as to require for the conveyance the precedent approval of the presbytery, but the same learned jurist conclusively answers that position as follows: "Before these amendments were made, it had been settled that a religious corporation held its temporalities wholly free from the domination of any ecclesiastical authority and by a tenure so independent that it could change its creed and denominational character without losing its hold upon its property.

"Doubtless the acts of 1875 and 1876 were intended to restrain, in some degree, that sort of diversion of church property from one sect to another, for the provision is that the trustees shall hold and administer it according to the rules and usages of the denomination to which the church

members of the corporation belong, and shall not divert it to the support of some other disconnected institution. It is not important to take the measure of this new legislation, for no authority in the church has ever held or pretended that a society could not sell its land without the consent of the presbytery."

The corporation may hold property the net annual income of which shall not exceed one hundred thousand dollars.

Laws of 1889, ch. 191, p. 225.

This is, of course, exclusive of the building used for divine worship.

III.

They have a right to sue and be sued by their corporate name in all courts of law. Suits should be commenced by and instituted against them, by their title as expressed in the certificate of incorporation, as "The trustees of the First Presbyterian Church of Rochester."

IV.

They have power to alter their churches or meeting-houses, to erect others if necessary, to erect dwelling-houses for the use of the ministers, and

school-houses and other buildings for the use of such church, congregation, or society. Such trustees have power to make rules and orders for managing the temporal affairs of such church, congregation, or society, and to dispose of all moneys belonging thereto, and to regulate and order the renting the pews in the churches and meeting-houses, and the perquisites for the breaking of the ground for the cemetery or church-yards, and in the said churches or meeting-houses for burying the dead, and all other matters relating to the temporal concerns and revenues of such society, to appoint a clerk, collector, and treasurer, to remove them at pleasure, and to regulate their compensation.

Laws of 1813, ch. 60, § 4.

Classification.

The trustees immediately after the election shall be divided by lot into three classes, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the first year, of the members of the second class at the expiration of the second year, and the members of the third class at the expiration of the third year, to the end that the third part of the whole number of trustees as nearly as possible may be annually

chosen. We have pointed out the manner in which the classification should be made on another page.

Subsequent Elections

must be notified in the same manner as the first, at divine service, fifteen days before the election on three successive Sabbaths, or days of stated worship, by, *first*, the minister; if none, *second*, by one of the elders or deacons; and for the want of such officers, *third*, by any other member or stated hearer in the church. The notice must specify the time and place of holding the election, which shall be at least six days before the expiration of the time of service of the class then about to terminate, and shall take place in the church or meeting-house used by the congregation.

Two of the elders, if such there be, shall preside at the election and receive the votes, or, if there be none, two members of the congregation, to be nominated by a majority of the members present, shall perform that duty.

The qualification of the voters was well stated by the court in the *People v. Phillips*, 1 *Kernan*, 388. Judge Beardsley says: "These sections prescribe the qualifications of electors, which, in brief, are: 1. Membership. No one can be an elector

who does not belong to such church, congregation, or society. 2. He must have been for a year at least a stated attendant on divine worship in said church, congregation, or society. 3. He must have contributed to the support of the same according to the usages and customs thereof.

“These qualifications can neither be abridged nor extended by any act of the trustees or of the corporators, but every person thus qualified has an incontestable right to vote at the election of trustees. The statute under which the incorporation was formed is its constitution, and every act in violation of this paramount law is necessarily invalid. This is a well-settled principle of the common law, and is of universal application to all corporations.” The most thorough discussion of the subject is in *People agt. Tuthill*, 31 N. Y. R., 560, as follows:

“The question to be determined is, What constitutes stated attendance on divine worship? It is obviously something more than mere attendance. It is attendance of a particular nature or character. The term stated is used to characterize the nature or kind of attendance which shall confer one part of the qualification or right. ‘Stated,’ as defined by Webster, is ‘settled, established,

regular, occurring at regular times, not occasional; as, stated hours of business.' A stated attendant is one who attends statedly, which is defined to be 'regularly at certain times, not occasionally.' The distinction between an attendant of that character, and one whose attendance is irregular and at uncertain periods or occasional only, is plain and well understood. Indeed, it is too plain and obvious to be aided much by attempts at exact description or definition. Regular attendance at the stated times for worship, as established in the church, or society, or congregation, as distinguishable from irregular or occasional attendance, is what is necessary. This attendance must be personal, and cannot be supplied by another. The regular attendance of a wife or other member of the family will not answer; and no amount of contribution to the support of the church or society can be accepted in lieu of this personal presence statedly. It is plain enough that the persons whose votes were challenged and rejected at the election in question were not such attendants as the statute requires to constitute legal voters. For the year preceding the election they had been, as clearly appears from the evidence, irregular and occasional attendants at most. Most of them seem to have

been regular contributors to the support of the society for many years, but not regular attendants on divine worship for the year preceding. They had one qualification, but not both, and their votes were properly rejected. It is unnecessary to determine, in this case, how often a person must attend at the stated periods for worship in the course of a year, to be a stated attendant. It is enough to say, that persons who attend a few times only in the course of a year, as compared with the number of stated times for worship within such year, and at irregular and uncertain intervals, are clearly not stated attendants.

“The next question is, in what manner a man must contribute to the support of such church or society in order to be a qualified voter. He must contribute to its support according to the usages and customs thereof. This undoubtedly means substantial and vital aid and support. Personal attendance and countenance might in one sense contribute to the support of such an organization. But that is not the contribution intended by this provision of the statute. The statute means the necessary material support, without which the organization cannot exercise its ordinary functions and perform its customary and appropriate duties

and ministrations. It means the parting with, and contribution of, a portion of one's worldly substance, in the usual and customary way, to be used in meeting and defraying the expenses incurred by the church, congregation, or society in the support of divine worship. Merely attending as a worshipper, or taking a leading or a subordinate part in the exercises, or rendering some special gratuitous service, will not answer this requirement of the statute. If the service rendered, however, is such as is usually and customarily hired and paid for by such organizations, and is by some understanding or agreement, express or implied, rendered as an equivalent, or in lieu of a contribution in money or property, such service would undoubtedly be a contribution to the support of the church, society, or congregation within the sense and meaning of the statute. The test is, does the contribution, whatever it may be, go immediately and directly to the support of the public worship maintained by the church, congregation, or society? In this view, contributions made not for the support and maintenance of the religious incorporation, but for the support or promotion of some other object or enterprise in which the church, congregation, or society may be engaged, however valuable or praiseworthy,

as Sunday-schools, missions, and the like, will not be sufficient.

“The obvious and sensible policy of the statute was to secure the government and control of the temporalities of each of the religious incorporations formed under it to such of its members or supporters as should manifest their attachment to its tenets and doctrines, and their interest in its success and usefulness, by their habitual presence and countenance, and their habitual contributions to its support. It is quite plain, too, that upon no other principle or policy could these corporate bodies, depending as they all do upon mere voluntary contributions for their maintenance and support, be permanently kept up, their existence continued, and their usefulness maintained.”

After the presiding officers have counted and announced the votes, they shall prepare a certificate substantially as follows :

Form of Certificate.

To all to whom these presents shall come, greeting :

Know ye that we, John Doe and Richard Roe, elders of the Central Presbyterian Church of Rochester (or stated members and worshipers of the —— Church, duly chosen for that purpose), who presided at an election this day held at said

church, of which notice was duly given, for the purpose of electing three trustees of said society, do hereby certify that we acted as such presiding officers and received the votes of lawful electors present, and that by a plurality of votes cast at said election the following persons were chosen such trustees, to wit :

(Here give the full names.)

In witness whereof we have hereunto set our hands this
— day of —, 1890.

The Clerk or Secretary of the Trustees shall thereupon enter such certificate in full in his book of minutes, and the same shall be evidence of such election.

Laws of 1813, ch. 60, § 6.

Of Vacancies.

A vacancy is created whenever a trustee ceases to be a member of the church, congregation, or society, by removal or otherwise, or ceases to steadily attend upon or support its services. His place shall be declared vacant by a notice of the Board of Trustees to the church. Thereupon the society shall fill the vacancy by an election conducted in all respects as that prescribed for the choice of trustees hereinbefore described.

Laws of 1875, ch. 79, § 2.

But trustees continue in office not only until their

time expires, but also until their successors are chosen.

Id., § 15.

Meetings

must be called upon reasonable notice in writing; by analogy with the requirements of other similar bodies, I should say at least three days prior to the time of holding the same, but certainly long enough to allow the trustees to be present. Verbal notice, if acted upon, would be sufficient. In fact, the presence of the trustee at the meeting without objection would be a waiver of notice.

The president acts as chairman, or, in his absence, any one by a majority of voices called to the place. A majority of trustees constitute a quorum for the transaction of business. Business commenced when a quorum is present may be continued with a smaller number; otherwise it would be in the power of one or two persons, by leaving the meeting after its organization, entirely to thwart its proceedings.

But, as a rule, the constitution and by-laws prescribe the rules subject to which the meeting shall be held, and, if adopted by a majority, in the absence of any special statute constitute the laws of the board.

Any two of the trustees may call at any time a meeting of the board. A majority of the whole number shall constitute a quorum, and a majority of that quorum may determine any question brought before the meeting. The presiding trustee, in the event of an equal division, shall have a casting vote.

Laws of 1813, ch. 60, § 5.

The Clerk.

It is the duty of the trustees at their first meeting to elect a clerk, to serve such time as the trustees may designate, and upon such terms as shall be provided by them.

It is his duty to notify each member of the board of any meeting, of which written notice should be given at least three days before holding such meeting, specifying the time and place of holding the same.

He must keep accurate minutes of all proceedings had at meetings of the trustees, in a book to be provided for that purpose.

He must keep a register containing the names of all persons desiring to become stated hearers in the church. The names should be alphabetically arranged, so as to be easily referred to, and the clerk should attend with it at all subsequent elections, in

order to aid the inspectors in determining the qualifications of voters. The absence, however, of the clerk, or his failure to keep such book, would not render an election invalid. The duty is devolved upon him to keep it, and the courts would, if asked to do so, compel him to perform it.

The trustees cannot fix or ascertain the salary of the clergyman. But the same must be fixed by a majority of persons entitled to elect trustees at a meeting to be called for that purpose, and said salary, when fixed, must be ratified by said trustees, or a majority of them, by an instrument in writing under their common seal.

Form of Writing.

Whereas, at a meeting of the persons duly authorized to vote for trustees of the First Presbyterian Church of Rochester, duly held at said church on the — day of —, 1890, the salary of Rev. John Doe, recently called to the pastorate of said church, was fixed and ascertained at the sum of \$2,400 per annum, not including the use of the parsonage belonging to said church, which was also allotted to him for his use so long as he shall continue to be such pastor, which said salary is to be paid monthly in advance; that is, \$200 on the first day of each and every month:

Now, therefore, we, the trustees of said church, do hereby ratify the action of said electors so taken as aforesaid with

reference to said salary, and agree as such trustees to pay the same, as so fixed and ascertained, to said John Doe.

In witness whereof we have as such trustees hereunto set our hands and the corporate seal of said church this —— day of ——, 1890.

Paddock v. Brown, 6 Hill, 530.

Number of Trustees: How Increased and Diminished.

The trustees can never be less than three or more than nine, but within that limit their number may be increased or reduced by the electors of the church. Notice of the proposed action and of the meeting for that purpose must be given at a stated service on Sunday at least two weeks beforehand.

The notice may be as follows:

The electors of this church are requested to meet in this room on Monday the —— instant at seven o'clock P.M., for the purpose of considering the propriety of increasing the number of our trustees to nine (or decreasing the number of our trustees to three).

The meeting shall be held in all respects as a meeting for the election of trustees. The clerk at its conclusion shall enter the result on his minutes, and prepare a certificate which shall be signed by the presiding officers, acknowledged by them, and recorded. The Statute Law of 1866, ch. 414, does

not provide for this certificate or its record. But in analogy to similar statutes, I think, so important is the action that it would be always better to go through that form.

Triennial Reports of Income.

Section I of the Laws of 1850, ch. 122, provides that the treasurer, or the trustees or a majority of them, shall once in three years exhibit to a Justice of the Supreme Court an inventory of the estate and property of the church, where the same exceeds \$6,000. But the act, I opine, is a dead letter, and, so far as I know, has never been observed; more especially as churches are now permitted an income of \$100,000. In the event of a large excess of income beyond this latter sum, the matter might be presented to the legislature, who would doubtless sanction the excess.

Sale of Real Estate.

The provisions for the sale of the lands of the corporation are the same as those explained *ante*, page 48, except that the word "trustees" must be used instead of the words, "rectors, wardens, and vestrymen."

The land can be sold only for the benefit of the corporation, and the proceeds used for the contin-

uance of its worship, and an order of the County Court directing a sale for any other purpose would be wholly void. The duty of the trustees is to preserve and administer the church property only for the promotion of the purposes for which the corporation was created.

Wheaton v. Gates, 18 N. Y. R., 395.

Trustees Hold Over When.

“Whenever there shall be any omission at their stated annual meeting to choose any of the trustees, vestrymen, church-wardens, or other officers, the corporation shall not be deemed dissolved, but the trustees and other officers in office shall continue therein until others shall be chosen in their stead: provided elections to supply such omissions shall be made within one year after their occurrence.”

Laws of 1844, ch. 158.

Power to Provide Associate Churches, Chapels, etc.

Whenever any religious corporation shall deem it necessary or expedient for the accommodation of its members to increase the facilities of public worship, the vestry or trustees thereof may purchase or hold grounds in the same village, town, or city,

and may erect thereon suitable associate houses, or churches or chapels, and also, at the same time or thereafter, purchase or hold other grounds for the purpose, and erect thereon suitable school-houses for Sunday or parochial schools for the said associate chapels, meeting-houses, or churches, and hold any such grounds, with suitable buildings already erected thereon for the like purpose, notwithstanding any restriction contained in its charter or the Act of 1813. And when the persons worshipping in any such associate meeting-house shall be incorporated, with the consent of the parent church, the latter may convey to the new corporation, with or without consideration, the aforesaid meeting-houses or chapels or churches, and subject to such conditions as the trustees of said primary corporation may deem best; provided, only, that such demise, grant, or conveyance shall be made in the manner now prescribed by law for the sale or mortgage of the real estate of religious corporations.

Laws of 1879, ch. 117.

Change of Name.

I have already *ante*, page 57, explained fully the proceedings adequate to accomplish a change of name.

Consolidation.

Any two or more Presbyterian societies may, if duly incorporated, unite, and consolidate themselves into a single corporation.

Laws of 1875, ch. 209.

The proceedings for such consolidation are fully and minutely set forth at pages 59 and 60, and are applicable, except that the approval of the presbytery must be first obtained.

Change of Time of any Election and Term of Office.

Any society may, by a majority of voices, change the day fixed for the election of trustees, and alter the dates on which their terms of office shall begin and end.

But notice of a meeting, called for that purpose, shall be given in the same manner as that prescribed as hereinbefore stated for the election of trustees, and the meetings conducted in the same manner. The entry of the proceedings by the clerk on his minutes will be a sufficient evidence of the alteration.

This action, however, shall not affect trustees

already elected, or permit an election for a longer period than three years.

Laws of 1875, ch. 79, § 1.

Bequest or Devise to.

Any religious society may take or receive, by bequest or devise, any real or personal property the net annual income of which shall not exceed twelve thousand dollars.

Laws of 1875, ch. 79, § 3.

But this provision is subject to the limitation imposed by the Laws of 1860, ch. 360, which provides that no person having a husband, wife, child, or parent, shall devise or bequeath to any religious society, in trust or otherwise, more than one-half his estate after the payment of his debts.

Now, however, by the Laws of 1889, ch. 191, any religious corporation may hold property worth two million dollars, and yielding an income of one hundred thousand dollars.

Presbyteries: How Incorporated.

A presbytery at any stated meeting thereof (that is, a meeting duly called in accordance with its constitution and by-laws) may, by plurality of votes, elect any number of discreet persons, not less than three or exceeding nine in number, as trustees to

take charge of the estate and property belonging thereto and to transact all affairs relating to the temporalities thereof.

The moderator should preside at such meetings and receive the votes. Immediately after the election the moderator and stated clerk of the presbytery must certify the election of trustees by certificate substantially as follows:

Form of Certificate.

To whom it may concern:

Know ye that we, John Doe, Moderator, and Richard Roe, Stated Clerk of the Rochester Presbytery (*giving its title*), do hereby certify and return that at a stated meeting of said Presbytery, duly called and held at ———, in said city, on the ——— day of ———, 1890, the following named persons were elected as trustees for such presbytery, to wit: (*Give full names.*) that the name by which said trustees and their successors shall be hereafter named and called shall be the Trustees of the Presbytery of (*here insert the title*).

In witness whereof we have hereunto set our hands and seals this ——— day of ———, 1890.

(Signed,) JOHN DOE, Moderator. [L.S.]
RICHARD ROE, Stated Clerk. [L.S.]

STATE OF NEW YORK, }
MONROE COUNTY, } ss.

On this ——— day of ———, 1890, before me the subscriber personally appeared John Doe and Richard Roe, to me known

to be the same persons described in and who executed the foregoing certificate, and severally acknowledged that they executed the same.

———, Notary Public.

The certificate, being recorded by the clerk of a county situate wholly or in part within the bounds of such presbytery, in the book wherein the clerk is required to record certificates of the organization of religious societies, shall constitute such trustees and their successors a body corporate by the name or title expressed in such certificate.

Laws of 1875, ch. 381, § 1.

Their Powers.

They shall be capable of taking, for religious, educational, or charitable purposes, by gift, devise, bequest, grant, or purchase, and of holding and disposing of the same, any real or personal estate held for the benefit of any such governing body, or of any parish, congregation, society, church, chapel, mission, religious, benevolent, educational, or charitable institution, existing or acting under such governing body, provided that the net yearly income received from the said property shall not exceed twenty-five thousand dollars.

Laws of 1875, ch. 381, as modified by Laws of 1876, ch. 110.

They are also vested with power, whenever any religious society connected with the presbytery shall become extinct, or shall cease to maintain religious services therein for two consecutive years, for any cause, to take possession of its temporalities, to manage and dispose of the same, and apply the proceeds thereof to any of the objects of the organization, religious or charitable.

The presbytery to which the society belongs shall determine when such society has become extinct, but no society having more than thirteen resident members shall be declared extinct unless it has failed for two consecutive years to maintain religious services.

Any service, however, in a single year within the presbytery by such society would preserve its existence.

Office of Trustees.

The trustees are a close corporation, and continue in office until death or resignation, and fill any vacancy which may occur in their body.

Power of Trustees of the Church Society to Acquire Lands for Cemetery Purposes.

Any incorporated religious society which now has, or may hereafter acquire, lands for the purpose

of a burial-place or cemetery may sell lots or plats therein, upon such terms as may be agreed upon, and subject to such conditions and restrictions as may be imposed on them by the rules of the corporation. The conveyance, however, must be executed under the common seal of the corporation and signed by a majority of the trustees.

Laws of 1881, ch. 501.

But no mortgage on said cemetery shall be made, or any body removed, without the consent in writing of three-fourths of the congregation duly acknowledged.

Parsonages—Trustees for.

Chapter 408 of the Laws of 1875 provides that where a minister shall serve two or more societies it shall be lawful for any society, so constituted, to own a lot or lots, or a farm, with such buildings thereon as it may deem proper for the use of such minister.

It also makes provision for the election by any such society of three trustees to hold the title to such property for its use. The statute prescribes minutely the mode of electing such trustees.

The event contemplated is of so rare occurrence, however, that I omit the *minutiæ*.

Free Churches and Chapels.

By the Laws of 1867, chapter 657, religious corporations are authorized to purchase and hold grounds in the village, town, or city in which their church-edifice is located, for the purpose of erecting free churches and chapels and parsonages, schools and chapels therefor, mission houses for the poor, free hospitals and asylums for the sick, aged, and indigent, and dispensaries for the poor; notwithstanding any restriction contained in their charter or in the act under which they are incorporated.

The trustees of the society shall take charge of them; and the seats and pews in every such church or chapel shall be entirely free for the use during public worship of all orderly persons; and no rent or charge or exaction shall ever be required of such persons.

But they shall not, by their attendance in such free churches or chapels, become voters or acquire any rights in the parent church.

Error in Deed.

Chapter 459 of the Laws of 1888 provides that in all cases where there shall be an error in the designation of a church as grantee in a deed of lands, if

it contains the principal words of its title, and the corporation has taken possession of the premises, it may correct the mistake by a statement made by an authorized officer and duly acknowledged, setting forth the error minutely, and leaving it for record with the Clerk of the County.

Dissolution of Corporation.

Whenever any religious society shall cease to act in its corporate capacity and keep up religious services, it shall be lawful for the Supreme Court of this State, upon the application of a majority of the trustees incorporated by law, except in the City of New York, in case the court shall deem it proper so to do, to order and decree a dissolution of such religious society, and for that purpose to order and direct a sale and conveyance of all property belonging to the society, and, after ascertaining and providing for the ascertainment and payment of its debts and the necessary costs and expenses of the sale, and the proceedings to effect it, direct any surplus to be devoted to such religious, benevolent, or charitable purpose as such trustees may indicate in their petition and the said court may approve.

The application may be made by a petition as follows:

SUPREME COURT.

In the matter
of

The application of the Trustees of the First
Presbyterian Church of ———, for a dis-
solution of said corporation.

The petition of ———, all of ———, in the County of ———, respectfully represents that your petitioners constitute a majority of the trustees, duly elected, of said ——— Church, which is a corporation duly incorporated under and by virtue of the laws of this State at ——— aforesaid, on the ——— day of ———, 18—; that said corporation has ceased to act in its corporate capacity, and no religious services have been held by it since the ——— day of ———, 18—, for the reason that its members have been unable to furnish the pecuniary support necessary for that purpose ; that the said corporation is indebted to various persons in the sum of \$———, of which a particular statement is hereto annexed, marked "Exhibit A," which is made part of this petition ; that the situation, condition, and estimated value of the property of said corporation is particularly set forth in Exhibit B, hereto annexed ; that your petitioners propose, if this Honorable Court shall so direct, to devote any surplus remaining after paying the said indebtedness, the cost of this proceeding, and of the sale of such property, to the Board of Home Missions of the Presbyterian Church ; that notice of this application has been published as required by law.

Wherefore your petitioners pray that a reference may be had to ascertain the amount of such indebtedness and for an order of the court directing a sale of such property, and that the proceeds be applied, *first*, to the payment of the cost of this proceeding and the expenses attending said sale ; *second*, to the payment of said indebtedness, if sufficient for that purpose : if not, to the payment of the same *pro rata* ; and, *third*, if there shall be any surplus remaining after such payments shall have been fully made, that the same be paid to the Treasurer of the Presbyterian Board of Home Missions located in the City of New York.

(Names of Trustees.)

* Dated,

STATE OF NEW YORK, }
MONROE COUNTY, } ss.

, being duly sworn, says that he is one of the trustees named in the foregoing petition ; that the same was duly signed by a majority of the trustees of said corporation ; and that said petition is true, to the knowledge of this deponent, except as to the matters therein stated upon information and belief, and as to those matters, he believes it to be true.

Sworn to before me this — day of —, 1890.

The petition must be accompanied by proof that notice of the time and place of such intended application has been duly published once a week for four weeks successively next preceding such application,

in a newspaper published in the county where such society is located.

The court may either order a reference to a counselor of the court to take proof of the facts and circumstances mentioned in the petition, which, it seems to me, would be the approved practice, or may at once make an order in accordance with the prayer of the petition, appointing a suitable person referee, to make the sale, and directing the application of the proceeds. If a reference is directed, then upon the coming in of the report of the referee the sale will be ordered.

The laws relating to pews, to taxation, to public worship, and marriage, as set forth in the law of the Episcopal Church, are applicable to the Presbyterian Church, and I find no reason to change my views as therein expressed except as to the age of consent, which by the Laws of 1887, ch. 24, was changed to eighteen in males and sixteen in females.

It has also been decided at Special Term that the rectory of a church is subject to taxation. This is contrary to the custom in our larger cities, and to the common opinion. The question for more than a century remained undecided in this State, although opportunities to raise it were frequent and numer-

ous, until 1888, when Judge Vann at the Onondaga Special Term, in a very cogent and able opinion, determined that a parsonage is not, within the meaning of the statute, a place of public worship, and therefore is subject to taxation.

People v. Collison, 22 Abb., N. C., 52.

Whether this view will be sustained by the higher courts seems to me to be still questionable.

THE BAPTIST CHURCH.

HISTORY.

THE Baptist Church, in the early history of this State, can be hardly said to have had within its territory an existence. Popery and prelacy were not more odious to the Scotch Covenanters than was the name of Anabaptist or Baptist to the dominant religions in this State prior to the Revolution. A few devout worshipers met occasionally to worship God according to their own tenets, but only as outlaws and at the risk of such humiliation as few men can endure. A church which now numbers in the United States nearly, if not quite, four millions, and which is second to no other in usefulness and in the grandeur and beneficence of its educational and benevolent institutions, was then composed of only a handful of brave men who dared to express their allegiance to its faith at the cost of all that the world holds dear. People complain now of the cost

of church membership, with all its comforts and privileges. How much it cost a Baptist, in colonial days, to worship in the way of his fathers, even in a barn, a few incidents will show.

In November, 1656, William Hallett, Sheriff of Flushing, had permitted one William Wickenden to address a few believers at the sheriff's house, upon the concerns of the soul, and had himself received from the preacher the Lord's supper. For this, Hallett was removed from office, fined what was in that day an enormous sum—fifty pounds; and, being unable to pay it, was banished from the colony. Wickenden, although his preaching had been confined to a private house, was subjected to a fine, and also banished.

September 21, 1662, the Dutch authorities passed an ordinance, from which the following is an extract: "They prohibit and interdict as yet, that besides the Reformed worship and service no conventicles or meetings shall be kept in this province, whether it be in houses, barns, ships, barks, nor in the woods nor fields, upon forfeiture of fifty guldens for the first offense for every person, whether man, woman, or child, that shall have been present at such prohibited meetings, and twice as much for every person, whether it be man, woman,

or child, that has exhorted or taught in such prohibited meetings, or shall have lent his house, barn, or any place for the purpose."

The first Baptist church in the city of New York was organized in 1724. It consisted of twenty-four members in its palmiest days; but, after an existence of eight years, its members were unable to sustain it, and disbanded.

The first church having an enduring existence, and which is now strong and flourishing, was the First Baptist Church, organized in New York City in 1762.

During the Revolutionary War it was dispersed, its records lost, and its little meeting-house used for a horse-stable. When the war commenced the church numbered over two hundred members; but when it was reorganized in 1782 only thirty-seven of its former members could be found. Rev. John Gano, who, prior to the struggle, had been the pastor for sixteen years, as soon as the church was cleansed preached to them from the text, "Who is there left among you, that saw this church in her first glory?" We are familiar with the text, "Blessed is the man who bears the yoke in his youth." Is not this true of churches as well as of individuals? Let the Baptist Church answer, as she marches along in her

grandeur, conquering, and to conquer, the hosts of vice, iniquity, and ignorance. From such beginnings has she become an army of four millions, fighting, shoulder to shoulder, under the Master's banner, against the world, the flesh, and the devil, and hastening the coming of that day when within the borders of this land all shall be His faithful soldiers and servants unto their life's end.

How Incorporated.

The members of the church of full age (twenty-one years, meaning those who have been formally received into the membership of such church) and every person of full age who shall have been for one year preceding a paying pew-holder or seat-holder in the place of worship of said church, or shall have been during said year a yearly paying subscriber for the support of said church, may assemble at their place of worship and by a majority of the votes of such persons elect either three, six, or nine persons of such qualified voters as a board of trustees.

Laws of 1876, ch. 329.

Females as well as males, if of full age and possessing the other qualifications above set forth, may vote at such elections.

The words “yearly paying subscriber” above named are new, and, I think, mean that the person must have agreed for one year, either by pew-rent, pledge, or otherwise, to contribute to the support of the church.

The election must be held in the church, and, I think, would be invalid if held elsewhere. Corporations, religious as well as secular, are mere creatures of the statute, and must in all things comply with its provisions. So that the statute, authorizing an assembly “at their place of worship,” excludes the right to hold it elsewhere.

Notice of the election should be given from the pulpit for three successive Sundays next prior to the election; and should be in a form similar to this:

Notice of Election.

Notice is hereby given that the lawfully qualified electors of this church will assemble in this room, on the —— day of —— instant, at seven o'clock P.M., for the purpose of electing —— persons to act as trustees of said church, and to transact such other business as may come before the meeting.

Any person present may be selected to preside at such meeting, and a secretary and two tellers should be selected by vote. As soon as the result is announced, the trustees having the highest num-

ber of votes should prepare a certificate of their election, substantially as follows :

Certificate of Election.

We, John Doe and Richard Roe, of Rochester, Monroe County and State of New York, do respectfully certify and return that at a meeting of the members of the Second Baptist Church of the City of Rochester, for the purpose of electing —— persons to act as trustees for said church, held therein on the —— day of ——, 1890, of which notice was given on two successive Sundays, as required by law, the said John Doe was elected and acted as chairman of said meeting, and said Richard Roe acted as secretary thereof ; that by the votes of a majority of the duly qualified electors of said church the following named persons were duly elected such trustees, to wit : (*Here give full names of persons elected.*) ; that it was also determined at said meeting that the corporate name or title of such trustees should be the " Trustees of the Second Baptist Church of the City of Rochester."

In witness whereof we have hereunto set our hands and seals this —— day of ——, 1890.

(Signed,)

JOHN DOE, Chairman. [L.S.]

RICHARD ROE, Secretary. [L.S.]

STATE OF NEW YORK, }
MONROE COUNTY, } ss.

On this —— day of ——, 1890, before me the subscriber personally appeared John Doe and Richard Roe, to me known to be the same persons described in and who executed the

foregoing instrument, who, being by me duly sworn, did each for himself depose and say that the foregoing certificate is in all respects true.

———, Notary Public.

The statute does not in terms require the acknowledgment above, but I think the clerk needs it for his own guidance, and the certificate is stronger as evidence. Upon recording the certificate with the Clerk or Register of the County where the church is located, such persons become a corporation, with precisely the same powers, limitations, and duties as the trustees of Presbyterian societies. The chapter on the laws governing trustees of that religious body is in all things applicable to the trustees of Baptist churches, except as hereinafter mentioned.

Their classification is the same, their meetings are conducted in the same way, and their authority in the management of the temporalities of the church precisely similar. The change is but a change of name. The trustees so elected shall be so divided by lot at the first election that one-third of them shall go out of office at the expiration of one year, one-third at the end of two years, and one-third at the end of three years; and thereafter the term of service of one-third of their number

shall expire annually, and their places be filled by a new election, called and conducted precisely as hereinbefore set forth.

Whenever a person, elected trustee, shall cease to attend and support the worship of said church for six consecutive months, the Board of Trustees may officially give notice to the church declaring his position vacant, and an election to fill the vacancy shall be called and conducted in the precise manner hereinbefore stated for the election of trustees.

Laws of 1876, ch. 329, § 7.

But the trustees have no power to remove a minister of the church or determine his salary or compensation; or to fix or change the times, nature, or order of the public or social worship of such church; or to sell, alienate, or encumber the property of the church, unless such authority is specially conferred by said church upon such trustees: and the authority to alienate, sell, and encumber the church property shall be valid only when approved by a majority present at a meeting of persons qualified to vote for trustees, which said meeting shall be called and conducted in the same manner as that for the election of trustees.

The trustees shall hold regular meetings for the transaction of business at such time and place as

they may appoint; special meetings may be called by any three of them. A majority of the trustees shall constitute a quorum for the transaction of business, and a majority of the votes of such quorum upon any question properly submitted shall determine it.

It must not, however, be forgotten that the trustees of a corporation have no separate or individual authority to bind the corporation, and this although the whole number, acting singly, and not collectively as a board, should assent to the particular transaction. The trustees can perform an act binding on the corporation only at a meeting of the body at which either all are present or all had an opportunity to be present. Even the written consent of all of them to a particular measure, signed and sealed by all, would be utterly ineffectual. It is only a majority of a quorum of the trustees lawfully convened who can do a lawful act, or determine any question relating to the temporalities of the church.

People's Bank v. Church, etc., 109 *N. Y. R.*, 522.

Thus, where at a social meeting of a church society a subscription paper fixing the parson's salary was signed by various parties connected with the church, and signed by all the trustees with one exception, the Court of Appeals refused to sustain this

action, and said: "All that was done was by the voluntary action of individuals. The judgment or will of a majority of the qualified voters as an aggregate body was not ascertained. No question was put to them. The proper way to ascertain the wishes of a deliberative assembly is by a vote of some kind."

Sanders v. Meth. Church, 114 N. Y. R., 626.

The Southern New York Baptist Association.

In 1871, by chapter 392 of the laws of that year, was incorporated the above association, authorized to receive, hold, and enjoy any property by virtue of devise, bequest, grant, or purchase; provided the annual income of such property shall not exceed the sum of two hundred thousand dollars, and that the same shall be appropriated to religious, charitable, missionary, or educational purposes.

The corporation is a close one, authorized to ordain such by-laws and regulations as they shall think proper for their government.

The New York Baptist Association, the Church Extension Committee of the Hudson River South Baptist Association, and the New York Baptist Sunday-school Union are authorized to merge themselves in it, and to transfer and convey to it their property.

THE REFORMED PROTESTANT DUTCH CHURCH;

SINCE 1869,

THE REFORMED CHURCH IN AMERICA.

HISTORY.

THIS is one of the oldest ecclesiastical bodies in America. It originated in Holland in 1583, the Prince of Orange then proclaiming that he "would maintain and promote the Reformed religion and no other," and prohibiting the public exercise of the Roman religion. Emigrants from Holland, early in the seventeenth century, brought it with them to the Island of Manhattan. The Classis of Amsterdam had charge of it, and commissioned the colonial clergy. Their first ministers appear to have been Jonas Michaelius, who had charge of a parish which held its meetings in a loft over a mill, in the Island of Manhattan, as early as 1628, and, five

years later, Everadus Bogardus, husband of Anetzie Jans, well known to the legal fraternity by reason of the unsuccessful assault made by her descendants on the title of Trinity Church.

Indeed, about the middle of the seventeenth century it seems to have been almost the only Church in the New Netherlands, as the Directors of the West India Company, with the sanction of the States-General, enacted in July, 1640, that no other religion should be publicly admitted in that colony except the Reformed as then preached and practiced by public authority in the United Netherlands; and for this purpose the company should provide and maintain good and sufficient preachers.

Governor Stuyvesant was the firm advocate and zealous conservator of this religious polity, and in 1656 issued a proclamation forbidding preachers of any other doctrine, or called by other ecclesiastical authority, to exercise ministerial functions within his jurisdiction. A penalty was imposed both on the clergyman so offending and upon all attending the services conducted by him. The Lutherans, even, were forbidden to worship in their own churches. All were permitted to worship God in their dwellings as their consciences might dictate, but in public only in harmony with the established

religion as set forth by the Synod of Dort. The law was enforced with great severity, and its infraction, even by public meetings held in the woods, was severely punished. So, by a decree of the company in 1673, it was decreed that the Christian religion according to that synod should be maintained in all things, without permitting the slightest attempt to be made against it by any other sectarians. For a few years it maintained its almost exclusive sway on the Island of Manhattan, and has ever been a power there.

The management of the affairs of the church seems always to have been vested in the minister and elders and deacons, who together constituted its trustees, each having an equal voice in its government. The governing power consisted generally of four elders and four deacons, elected annually, who, with the minister, controlled the temporalities of the church.

At an early day each church enjoyed the services of two ministers—one whose duty was more particularly to preach the word, the other to “serve tables;” that is, to visit the parishioners, to minister to the sick and afflicted, to bury the dead, and oversee the proper distribution of the charities of the church.

In 1869 the name of the religious body was changed to The Reformed Church in America.

Laws of 1869, ch. 197.

Government.

The minister or ministers and elders and deacons, and during any time if there be no minister then the elders and deacons during such time, of every Reformed Protestant Dutch Church or congregation elected according to the rules and usages of such churches within this State, shall be the trustees for every such church or congregation.

Laws of 1813, ch. 60, § 2.

How Incorporated.

The said trustees, if they shall desire corporate privileges, may become a corporation by executing a certificate certifying the corporate name or title by which they desire to be known. The certificate must be signed by all the trustees, acknowledged or proved before an officer authorized by law to take the same, in the manner required to authorize the record of a deed. Upon filing such certificate in the office of the Clerk of the County where the church

is located, such trustees shall become a body corporate by the name expressed in the certificate.

Id.

Form of Certificate.

Know all men by these presents that we, —— and ——, Trustees of St. John's Reformed Church, worshipping in the City of Rochester, hereby certify our desire to become a corporation under the name and title of "St. John's Reformed Church of the City of Rochester."

In witness whereof we have hereunto set our hands and seals this —— day of ——, 18—.

[L.S.]

[L.S.]

[L.S.]

(Form of acknowledgment as on page 94.)

Trustees incorporated by any act prior to 1813 may, if they so desire, relinquish their corporate organization by filing a like certificate declaring their intention not to continue a body corporate. The certificate must be acknowledged or proved in the same manner as that before mentioned. Its record by the Clerk of the County dissolves the corporation, and vests the title to its property in the trustees. The trustees, of course, take it subject to all the obligations of the corporation.

Any of the churches in this State in connection

with the Reformed Protestant Dutch Church whose temporal affairs are under the management of a consistory, or board of officers elected or chosen from such persons only as are in communion with said church, may, if the said consistory or board so determine, at any time confide the management and care of the temporal concerns of the said church to a board of trustees, not less than seven nor more than nine in number; and such determination shall be reduced to writing and signed by the president and secretary or clerk of said board, with the seal of said corporation affixed, duly acknowledged by said president, and recorded with the Clerk of the County where the church is situated. Thereupon the following election shall be had.

Laws of 1835, ch. 90, § 8.

Election of Trustees: How Conducted.

The persons entitled to vote are males of full age, who have been stated attendants on public worship in said church for more than one year, and have contributed to its support according to the usages and customs thereof. They must have been regular in their attendance on divine worship and habitual contributors to its support during all that period. They must meet at a time and place ap-

pointed for that purpose by the consistory, and by plurality of votes select from duly qualified electors of the church not less than seven nor more than nine persons, to be its first trustees, who shall have charge of its estate and property and transact all affairs relating to the temporalities thereof. It will be observed that the trustees are not qualified for election unless for more than one year they have contributed to the church their personal presence at its worship and their money for its support, whether by way of pew-rent, pledge, or Sunday offering. These qualifications can neither be abridged nor extended by any act of the trustees or of the corporators, but every person thus qualified has an incontestable right to vote at the election of trustees.

People v. Philips, 1 Den., 398.

Election : How Conducted.

Notice of the time and place must be given during divine service in the church on at least two days on which worship shall be statedly held therein next previous to the time of such election. It would be better to give the notice, which should distinctly specify the hour and place of holding the

election, and the time during which the polls will be open, on two Sundays next before the day mentioned in such notice. But it would be doubtless sufficient at two week-day services habitually held in said church.

Laws of 1835, ch. 90.

The election must be conducted under the supervision of three inspectors appointed by the consistory, by written appointment, and at a regular meeting thereof, whose duty it is to preside at the election and receive the votes of the electors. They are by statute judges of the qualifications of voters, although the law will compel them to exercise a reasonable discretion in that matter. It is also their duty to certify in writing, and return to the consistory, the names of the persons so elected, and to notify in writing the successful candidates of their election.

Classification.

Immediately after the election the trustees must be divided into three equal classes, as near as may be; if nine are chosen, into three each; if eight, into two classes of three and one of two; if seven, into two classes of two and one of three. These

classes shall be numbered respectively one, two, and three, who shall draw lots to determine the duration of their office—the first named holding office for one year, the second for two years, and the third for three years. The trustees, or a majority of them, shall, at least one month before the expiration of the office of any class, notify the same in writing to the minister, if there be one; if none, or if he is absent, to the elders; and in case there shall be no elders, then to the deacons, specifying the names of the trustees whose terms will expire. The minister shall thereupon give the notice above required, and the vacancies shall be filled by an election as above specified, and to be held at least six days before the expiration of such term.

A vacancy occasioned by death or removal from the town where the church is located must be filled in the same way.

Meetings

must be conducted in the same way as those held in the Episcopal Church (page 42), and upon like notice. A majority of the trustees must be present, to constitute a quorum, and one of the number, who at their first meeting shall be chosen president, must preside.

Powers.

They have full power over the temporalities of the church, and may manage and control its secular business. There is but one limit to their authority, and that relates to the calling of a clergyman. They may fix his salary, but may not call him except with the concurrence of the consistory. All property of the church vests in them, and may be transferred by them, except only the "Deacon's Fund," which is subject to the control of the consistory. Of course, the real estate can only be sold by order of the court in accordance with the same rules before prescribed for the Episcopal Church (page 47). A president should be appointed at the first meeting, and a secretary or clerk.

The president must perform the usual duties of a presiding officer, and the secretary shall keep minutes of the meetings, and preserve the records of the church.

Change of Name.

If the trustees think it proper to change the corporate name of said church, they may do so by passing, at a regular meeting, a resolution to that effect. Then the president shall prepare a certificate certi-

fying such resolution, sign it as president of the Board of Trustees; acknowledge it before an authorized officer, and record it in the office of the County Clerk. Thereupon, such corporation shall be known and distinguished by the corporate name and style that may have been determined upon, and expressed in said certificate.

Form of Certificate.

To whom it may concern :

Know yē that I, John Doe, President of the Board of Trustees of the First Reformed Dutch Church in the City of Rochester, do hereby certify that at a meeting of said Board of Trustees, duly called and regularly held at said city, on the — day of —, 1890, it was unanimously determined by said board, by the lawful vote thereof, to change the name of the church aforesaid to "St. John's Reformed Church of Rochester, N. Y."

Witness my hand as such president, this — day of —, 1890.

(Form of acknowledgment as heretofore given.)

The Consistory.

The consistory, where the temporal management of the church is intrusted to the trustees, has charge only of the spiritual affairs of the congregation, the administering of the sacraments, a joint voice

with the trustees in the call of a minister, and the direction of all matters of church discipline as to receiving and the expulsion of members.

The elders and deacons who, with the minister, constitute the consistory, hold office two years, one-half of them being elected annually, at such time and place as may be determined by the constitution of the society. But they can be ordained only after notice of their election has been published in the church for three successive Sundays, at the ordinary time for giving notices, in order that all lawful objections to such ordination may be heard and considered by the consistory.

To constitute a quorum for the transaction of business, a majority of ministers and elders, and also a majority of deacons, must be present.

The minister shall preside at all consistory meetings, but in his absence the consistory may appoint one of the elders to be their president *pro tem*. They may prescribe the mode and time of calling their meetings, and, if there be a plurality of ministers, they shall preside in rotation. I suppose that by presiding in rotation, is meant that they shall preside alternately. When joined in one board, the elders and deacons have an equal voice in all that relates to the temporalities of the church and to

the calling of a minister ; but in admitting members to full communion, in exercising discipline upon those who have erred from the faith, or offended in morals, and in choosing delegates to attend the classis, the elders and ministers only have a vote.

THE METHODIST EPISCOPAL CHURCH.

THIS great body, so far as the statute law of this State is concerned, is subject to the same regulations as the Presbyterian Church. It is incorporated in the same way, except that its Book of Doctrines and Discipline contains a provision, which seems to me worthy of all praise, that two-thirds of the trustees shall be members of that body, meaning thereby, as I understand it, persons who shall have been formally received into its fellowship.

Book of Discipline, § 323.

The mode of election of trustees and the filling of vacancies is the same as that hereinbefore pointed out for the Presbyterian Church.

Id., § 324.

The Book of Discipline makes provision for the repayment of money advanced or paid by a trustee

or trustees, for the use of the congregation, enabling them, after giving one year's notice to the pastor to that effect, to raise the amount by mortgage on the church property or by the sale thereof; the surplus, after paying the debt, to be paid to the Annual Conference for the use of the Church. If the congregation erect a new church within five years, then the surplus shall be paid to them.

§ 327.

The sale, however, must be made as hereinbefore provided for the conveyance of church property by order of the court. The sale, too, must be a matter of right on the part of the trustees, and not require the consent of a majority of the qualified voters of the congregation, as they, of course, upon joining the Church, become subject to its Discipline.

Corporations to Secure Camp-grounds.

The presiding elder of any district, or the presiding elders of any number of districts, and a majority of the district stewards of any district or districts, appointed according to the discipline of the Methodist Episcopal Church, residing in any ecclesiastical district or districts in this State, erected by an annual conference of said Church as a presiding elder's dis-

trict or districts, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of any county in such district or districts, and a duplicate thereof in the office of the Secretary of State, a certificate in writing, in which shall be stated the names, residence, and official relation to the district of the persons signing said certificate, the number of trustees not less than nine nor more than twenty-one, and shall specify the names of the persons as trustees to manage the affairs of the corporation. The said trustees thereupon become a body corporate.

Laws of 1874, ch. 26, as amended by ch. 352, Laws of 1875.

Form of Certificate.

To all to whom these presents do come :

Know ye that we, ———, of the City of New York ; ———, of the City of Newark, in the State of New Jersey ; and ———, of the town of ———, in the State of ———, presiding elders of the Second General Conference (*or other*) District ; and ———, of ———, and ———, of ———, who constitute a majority of the district stewards of said district, each of whom was duly appointed such presiding elder or steward, according to the Discipline of the Methodist Episcopal Church, do hereby certify that we desire to create and form a corporation for the

purpose of securing camp-grounds and other property connected therewith, for the use of said Church, in pursuance of chapter 26 of the Laws of 1874, and the act amendatory thereof; that the number of trustees to manage the affairs of said corporation are twenty-one; that the names of the trustees to serve until others shall be elected in their places are as follows:

(*Name them.*)

that the name of said corporation shall be "The Trustees of the Second General Conference District of the Methodist Episcopal Church to acquire Lands and Other Property for the Use of said Church."

Witness our hands and seals this — day of —, 1890.

(Form of acknowledgment as *ante.*)

Classification.

The said trustees shall be divided by lot into three classes, the first class to hold their office one year, the second class for two years, and the third class three years.

Constitution.

The first duty of the trustees shall be to adopt a constitution, which shall prescribe rules and regulations for the government thereof and for the election of trustees and its officers. One-third of the trustees shall be annually elected, and vacancies

filled in such a manner as the constitution may prescribe.

When the camp-grounds proposed to be selected by the corporation are situated on or near the borders of our State, persons without the State may be permitted to join as members and be eligible to office.

When the number of the trustees does not exceed nine, or no constitution is adopted by the corporation, prescribing its trustees and officers, then the district stewards of any presiding elder's district, at their annual meeting, may appoint trustees and officers and fill vacancies. When two or more districts join in such corporation, the district stewards of each district, at the annual meeting, may appoint their equal proportion of said trustees; but if they cannot become equally divided, then the districts in which the camp-grounds are located may appoint such trustees.

Privileges of Such Corporation.

In addition to the privileges conferred on all corporations, the trustees may hold property whose income shall not exceed \$25,000 per year, as a camp-ground for camp-meeting purposes, may sell and convey the same, from time to time, and

invest the proceeds for such use as the trustees with the approval of the Annual Conference may direct.

The trustees may act as peace-officers, with all the powers conferred in the act relating to the disturbance of religious meetings. (*Ante*, page 85.)

When the association owns land on any of the navigable waters of the State, to be used for camp-grounds purposes only, it shall have power to regulate the landing of persons on such wharves, piers, or shore during the conducting of religious services, and prohibit the use of the same during such services.

Except as we have already stated, the statute law and forms of the Presbyterian Church, hereinbefore detailed, will exactly apply to the Methodist Church. The chapters hereinbefore contained, in the law of the Protestant Episcopal Church, relating to marriage, taxation, public worship, and the power of the trustees over the real estate of the corporation, are also applicable in their full scope, and, names being changed, in their minutest detail.

YOUNG MEN'S CHRISTIAN ASSO- CIATIONS.

How Incorporated.

ANY twenty or more persons, being citizens and residents of this State, and having associated themselves as a Young Men's Christian Association for the improvement of the spiritual, mental, social, and physical condition of young men, by the support and maintenance of lecture-rooms, libraries, reading-rooms, religious and social meetings, gymnasiums, and such other means and services as may conduce to the accomplishment of that object, according to the general rules and regulations of the State Executive Committee of the Young Men's Christian Associations of this State, may make, sign, and acknowledge, before any officer authorized to take acknowledgments of deeds in this State, and, with the written consent and approbation of one of the Justices of the Supreme Court, file in the office of the Secretary of State, and also in the office of the

Clerk of the County in which said society is to have its principal office, a certificate in writing in which shall be stated the object of such association, to be that above set forth, the place wherein the principal office is to be located, the number and names of the directors or managers of such association for the first year of its existence, and also the names of six trustees, who, together with the president of the association, shall form a board of trustees to hold and control the real property of such association.

Laws of 1887, ch. 501.

The persons desiring to form the corporation should first associate themselves by signing a paper substantially as follows :

We, the undersigned citizens and residents of Rochester, Monroe County and State of New York, have associated ourselves as a Young Men's Christian Association for the improvement of the spiritual, mental, social, and physical condition of young men, by the support and maintenance of lecture-rooms, libraries, reading-rooms, religious and social meetings, gymnasiums, and such other means and services as may conduce to that purpose according to the general rules and regulations of the State Executive Committee of the Young Men's Christian Associations of the State of New York.

Witness our hands this — day of —, 1890.

(To be signed by twenty or more citizens.)

Form of Certificate of Incorporation.

Know all men by these presents,

That we (*here name twenty or more persons*), citizens of the United States, who did on this — day of —, 1890, associate ourselves as a Young Men's Christian Association for the improvement of the spiritual, mental, social, and physical condition of young men, by the support and maintenance of lecture-rooms, libraries, reading-rooms, religious and social meetings, gymnasiums, and such other means and services as may conduce to the accomplishment of that object, according to the general rules and regulations of the State Executive Committee of the Young Men's Christian Association of this State, for the purpose of organizing a corporation under and by virtue of chapter 501 of the Laws of 1887, do hereby certify and declare that the object of such corporation shall be the improvement of the spiritual, mental, social, and physical condition of young men in the manner and by the means hereinbefore stated; that the place where the principal office is to be located is Rochester, Monroe County, New York; that the number of the directors or managers of such association, for the first year of its existence, shall be (*here state the number*) composed of the following named persons (*here name them*); that the names of the six trustees, who, together with the president of the association, shall form a board of trustees to hold and control the real property of such association, are the following (*here name six trustees*); that the name of such corporation shall be "The Young Men's Christian Association of Rochester, N. Y."

Witness our hands this — day of —, 1890.

(Twenty persons, at least, to sign here and to acknowledge before a notary public or other qualified person.)

Upon the certificate should be indorsed by a Judge of the Supreme Court as follows:

"I hereby consent to and approve the within certificate and the formation of the corporation therein named.

"——, Judge, S. C."

Dated,

The managers named in the certificate should at once organize by the election of a president and secretary, and adopt for their guidance a constitution and by-laws.

The Trustees

hold office until the appointment of their successors, and for such terms as their own by-laws may prescribe, and by a majority vote may fill any vacancy in their board. Each of them must be a member of one of the Protestant Evangelical denominations, but not more than two of such members, exclusive of the president, shall belong to any one denomination.

The trustees hold the real property of the association, but its management is intrusted to the board

of directors. It may not be sold or mortgaged without the consent of the association itself, as manifested by a majority vote of all its members. It is not liable for any debt, unless it shall have been contracted with the approval of the Board of Trustees.

The income of the association may not be diverted to any other use than that named in its certificate of incorporation, and shall be paid to its treasurer.

Corporate Powers.

1st. By filing the certificate as before said, the association becomes a body politic by the name mentioned in said certificate, having succession and the right to sue and be sued.

2d. To use a common seal (*vide* page 19, *ante*), and alter the same at will.

3d. To take, hold, and purchase real estate for the purposes of their incorporation, but for no other purpose.

4th. To make by-laws for the management of such corporation.

5th. To elect and appoint the officers and agents of such corporation for the management of its business, and to allow them a suitable compensation.

Sale of Real Estate, etc.

The Supreme Court, upon the application of three-fourths of the trustees, may make an order for the leasing or sale and conveyance of the real estate of the corporation, and direct the application of the proceeds to such uses as the court may deem most for the benefit of the corporation.

Laws of 1861, ch. 58, made applicable by Laws of 1889, ch. 33.

CONGREGATIONAL CHURCHES.

How Incorporated.

ANY Congregational church may be incorporated as follows :

1st. Notice

of a meeting to elect any number of trustees, not less than three nor more than nine, shall be given at the time of divine service on three successive Sundays next before the election, and at least fifteen days prior thereto.

Laws of 1885, ch. 208.

Laws of 1873, ch. 633.

2d. The Meeting

shall be held in the church. The minister, or one of the church officers, or if there be no minister or officer, then an elector, qualified to vote at such election, called by a majority of voices to the chair, shall preside, and a secretary shall be chosen in the same manner.

3d. Voters

must have the same qualifications as those hereinbefore defined at page 114. A plurality of votes shall elect.

4th. Certificate.

After the vote shall have been announced, a certificate of the result shall be prepared in substantially the following form:

Form of Certificate.

To whom it may concern:

Know ye that we, John Doe and Richard Roe, both of Rochester, Monroe County and State of New York, do respectfully certify and report:

1st. That at a meeting of the duly qualified electors of Plymouth Avenue Congregational Church, located in Rochester aforesaid, called in the manner required by law for the purpose of electing —— trustees of said corporation, of which said meeting notice was given in said church during divine service for three successive Sundays next preceding the same, said John Doe was, by a plurality of votes, elected chairman of said meeting, and said Richard Roe secretary thereof; that by a majority of legal votes cast at said meeting the following persons were elected such trustees, to wit:

(Name them.)

2d. That the name or title by which said trustees desire to be designated, and which they have adopted as their corporate

name, is the "Trustees of the Plymouth Avenue Congregational Church in the City of Rochester."

In witness whereof we have hereunto set our hands and seals this — day of —, 1890.

Meetings

are held as the trustees may provide. Any three of them may call a special meeting, and a majority shall constitute a quorum for the transaction of business. A majority of such quorum may decide any question presented to them relating to the temporalities of the church.

Of Vacancies.

Whenever a trustee, by removal or otherwise, ceases to be a member of such church, or, if not a member, ceases to attend or support its worship, he shall at the same time cease to act as trustee, and his place shall be declared vacant by an official notice of the board of trustees to the church, and a new election shall be ordered to fill such vacancy. The election shall be conducted in precisely the same way as that hereinbefore stated, except that no certificate is needed, the secretary entering the result of the election in his minutes.

Except as above stated, the treatise hereinbefore contained as to the law of the Presbyterian Church will apply in all respects to the Congregational body.

By the Laws of 1890, ch. 66, the members of this Church are permitted to make such rules as they may deem expedient for their own government; and at any annual meeting may change the qualifications of the members and voters of such society by prescribing that all elections, resolutions, and votes shall be determined by a majority of the members of the Church in good and regular standing according to its Rules and Discipline. Notice of the intention to consider or make such change shall be included in the notice of such annual meeting.

THE ROMAN CATHOLIC CHURCH.

How Incorporated.

ANY Roman Catholic church may be incorporated as follows: The Roman Catholic archbishop or bishop of the diocese in which such church may be erected or intended so to be, the vicar-general of such diocese, and the pastor of said church, for the time being, respectively, or a majority of them, may appoint two laymen, members of said church, and may, together with such laymen, sign a certificate in duplicate, showing the name or title by which they and their successors shall be known and distinguished as a body corporate by virtue of this act, which certificates shall be duly acknowledged or proved in the same manner as conveyances of real estate; and one of such certificates shall be filed in the office of the Secretary of State, and the other in the office of the Clerk of the County in which such church may be erected or intended so to be;

and thereupon such church or congregation shall be a body corporate, by the name or title expressed in such certificate; and the said persons so signing the same shall be the trustees thereof. The successors of such archbishop, bishop, vicar-general, or pastor, respectively, for the time being, shall, by virtue of his office, be the trustee of such church, in place of his predecessor; and such laymen shall hold their office respectively for one year, and whenever the office of any such layman shall become vacant by death, removal, resignation, or otherwise, his successor shall be appointed in the same manner as above provided for his original selection.

Laws of 1863, ch. 45.

Form of Certificate.

We, —— Bishop of the Catholic Diocese ——, of ——; John Doe, vicar-general of said diocese and pastor of St. Mary's Church, Rochester; and ——, both of the City of Rochester, County of Monroe, lay members of said St. Mary's Church, do respectfully certify that said lay members were duly appointed by said bishop and vicar-general to act with them as trustees of said church, for the year ending ——, 1890; that we desire to be incorporate under the name and title of St. Mary's Church, in said City of Rochester, by which we and our successors shall be known and distinguished as a body corporate.

In witness whereof we have hereunto set our hands this
— day of —, 1890.

(Form of acknowledgment as before.)

Such trustees shall have the power to fix the salary to be paid to the pastor or assistant pastor, and, in addition, possess all the powers conferred upon trustees of the religious bodies hereinbefore named.

They may also hold property worth two million dollars, but the yearly income shall not exceed one hundred thousand dollars.

Laws of 1889, ch. 191.

THE GREEK CHURCH.

ANY church or congregation of the "Christian Orthodox Catholic Church of the Eastern Confession" may be incorporated as follows:

The Envoy Extraordinary and Minister Plenipotentiary of Russia to the United States and the Consul-General of Russia to the United States, then acknowledged and received as such by the Government of the United States, may sign a certificate in duplicate showing the name or title by which they and their successors shall be known and distinguished as a body corporate by virtue of this act. The certificate shall be acknowledged or proved in the mode hereinbefore set forth for other certificates of incorporation. One of such certificates shall be filed in the office of the Clerk of the County where the church is, or is to be, located, and the other in the office of the Secretary of State.

Thereupon the Minister Plenipotentiary and Consul-General, and their successors in office, become trustees of such church.

It is a little remarkable that the representatives of the Russian Government should, in addition to their other duties, be also the trustees of all the Greek churches in this State. It is evident that if that religious body ever gains a foothold in this country, the statute will have to be changed, as it would be impossible for the minister and consul to act as such trustees.

They, as well as the vestry of the Episcopal Church and trustees of the Roman Catholic Church, are empowered to fix the salary of the pastor and assistant pastor of the church.

In all other religious bodies, however, the salary of the clergyman is fixed by a majority of the members of the church, or, rather, "of the persons entitled to elect trustees;" but this action of the congregation must be ratified by the trustees.

Laws of 1813, ch. 60, § 8.

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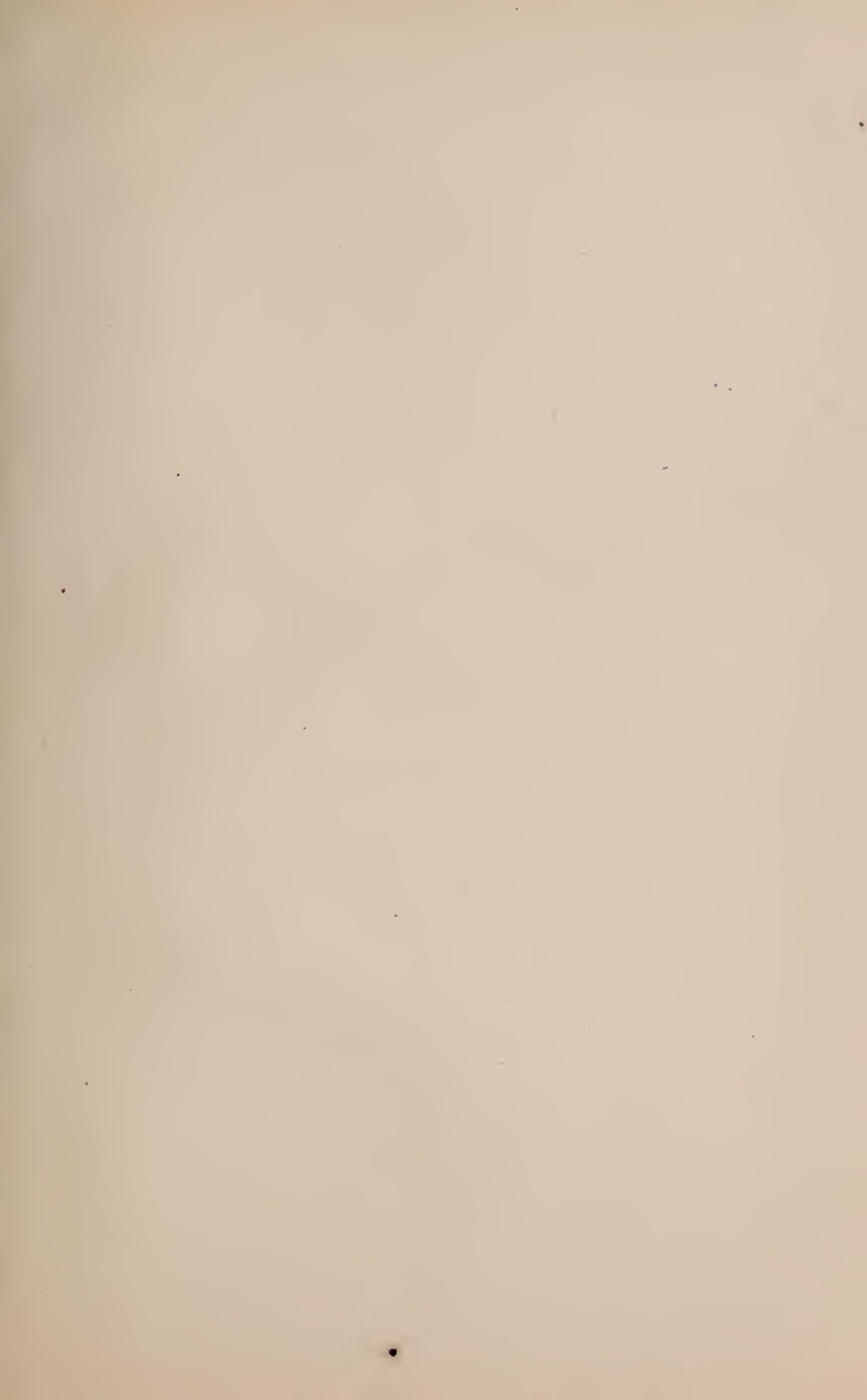
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